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A VIEW OF THE CIVILE AND Ecclesiasticall LAW:

And wherein the Practice of them is streitned *and may be relieved within this Land.*

Written by

Sr THOMAS RIDLEY Knight, and *Doctor of the Civile Law.*

The Third Edition, with severall Annotations by *John Gregory* M. A. of *Christ Church.*

OXFORD
Printed by *W. Hall* for *Edw. Forrest* 1664.

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Ex

TO THE READER.

THis *Learned and uſefull View of both the Lawes, once more adventureth it ſelfe upon the Opinion of Men, and it may now hope to receive a more indifferent cenſure then before, as being committed to a ſeaſon more mature, and more perfectly diſpos'd; for howſoever the Time that firſt brought this forth, could not be charged with any notable diſtemper; yet the Common-wealth wee live in is of that thriving nature, that however the preſent time may ſtill bee good, yet it alwayes makes the ſucceeding Age better then it ſelfe. This argues the State not neare her ruine, though ſome unruly Spirits, led by an irregular Motion, have beene bold to anticipate; as if every one that had ſo much pitty as to feare, had alſo judgement enough to foreſee the ruine of a Kingdome. Twas more then enough for ſuch Men to ſet downe the Fate of a ſingle-ſoule, without reſolving upon the doome of a whole Nation. But theſe that would ſeeme to know ſuch high things, are moſt properly puniſhed by being neglected: for to a Man that would bee thought to know, and knoweth not, no greater miſerie can happen, then that hee ſhould faile of his Expectation. If I were to ſerve or follow any time, I would propoſe the Preſent, which as it hath leſſe of the pretences of former Ages, ſo it hath much more of the Moderation: and if it needs muſt be ſuſpected that*

the State is not farre from her fall, let this be the onely reaſon, becauſe ſhe draweth ſo neere to her perfection. That which heretofore moſt of all incumbred theſe Dominions, was the diſproportion of the Civill Power to the Eccleſiaſticall. This a Great Prince abated, and the Act was truly maſculine, yet like thoſe of the ſtrongeſt importance, would not be perfected by the ſame hand; therefore it was by him ſo fully done, on the one ſide, that it might be feared leſt it ſhould runne over on the other. To prevent this, the diſcretion of theſe late diſcerning times hath warily provided; the wiſedome of the Prince having ſo well tempered both the Powers, that it may now be hoped, they ſhall agree one with an other as both doe in him, by a glorious correſpondence. The State thus bending towards the beſt, and the moſt perfect mediocrity, this Author whoſe hope that alwayes was, couldnot but revive again; therefore it is, that though hee be dead, hee yet ſpeaketh. If ſtill there be that will reprehend theſe our paines, as if they were caſt upon a man too much ſought after, be it ſo; but theſe men have leaſt cauſe to complaine, for if the matter of this Booke be, as they ſuppoſe, then the onely way to ſuppreſſe it will be to make it common, for things of that nature are leaſt of all enquired for, when they are moſt eaſily to be found; but if they rarely appeare, they are more eagerly ſought after, and the more obſtinately eſteem'd.

When firſt I would ſee this Treatiſe, I beheld it at a diſtance, and not without ſome prejudice; for ſo I was prompted by the inſinuations of a fallible Report; but finding it under the Protection of the High and Mighty Prince Iames, I tooke libertie to reſolve againſt

againſt all popular contradiction. And now, to ſeeke any other Patron for this new Edition, I have thought it altogether inglorious. For what can the man doe that commeth after the King?

For a Note or two, which I have here and there timerouſly let fall, If the Reader expect that I ſhould aske his pardon; there may bee cauſe, but there is no convenience: for this kinde of Complement is now adayes indifferently ſet before thoſe things that are well, and thoſe that are ill done. Beſides, it would argue Certaine follie, to be engaged there for pardon, where our choyce is to offend. What I have here done amiſſe, I ſhall hereafter hope to rectifie, either by doing ſomething that ſhall be better (if that may be) or (which is the ſafeſt way) by doing ſo no more.

J. G.

TO THE HIGH AND MIGHTY

PRINCE JAMES,

By the Grace of God, King of Great Britain *France and Ireland, Defender of the Faith &c.*

MOST gratious Soveraigne, ſince it hath pleaſed Your Majeſtie of Your Princely care towards the Church and Your Common-wealth, to take knowledge of ſome differences that are in Iudicature betweene Your Eccleſiaſticall and Civile Law, and the Temporall Law of this Land (by which joyntly Your Majeſties State is managed next after Your owne moſt rare providence, and the wiſdome of ſuch, whom it hath pleaſed Your Highneſſe to aſſociate unto Your ſelfe in the great affaires of Your Kingdome) I have been bold to offer unto Your Majeſtie this ſimple Treatiſe, as that which doth lay out the cauſe of thoſe Differences, more particularly than any man hitherto hath expreſſed the ſame. In comming to which

which (becauſe I doe ſpeake for thoſe parts of Your Majeſties Lawes, which are leſſe knowne unto Your people, and eſteemed no otherwiſe of them, than they ſee the practice thereof to bee here with in Your Land) I have thought good, as it were in a Brieſe, to ſet out the whole ſumme of both the Lawes, to the view of the people, that they may ſee, there is more worth in thoſe for whom I ſpeake, then was by many conceived to bee: So that the profeſſion of the Eccleſiaſticall and Civile Law may appeare to the world, neither to bee idle nor unfit for the State; ſo farre as it hath pleaſed the Royall Predeceſſours of Your Highneſſe to give entertainment unto it, and Your Majeſtie Your ſelfe to admit of it. In all which there is no other thing ſought, than that ſuch greevances as have beene of late offered by one Iuriſdiction unto the other, and in conſequence, to all Your Subjects, who follow thy ſuits in the Civile or Eccleſiaſticall Courts, may by Your Princely wiſdome be conſidered, and by Your authoritie be redreſſed, if they be found to be greevances indeed: for now as things are, neither Iuriſdiction knowes their owne bounds, but one ſnatcheth from the other, in maner, as in a batable ground lying betweene two Kingdomes; but ſo, that the weaker ever goeth to the worſe, and that which is mightier prevailes againſt the other: the profeſſors thereof being rather willing to give Lawes and interpretations to other, then to take or admit of any againſt themſelves. For which, the weaker appeales unto your Highneſſe, humbly deſiring Your Majeſties upright and ſincere Iudgement

to

o diſcerne where the wrong is, and to redreſſe it ccordingly, which is a worke worthy Your ajeſties high conſideration. For as the Land is ours, ſo alſo the Sea is Yours, and the Church is nder Your Highneſſe protection, as a Childe is un- er his Tutor; ſo that all the Lawes thereof ppertaine unto Your Majeſties care & comfort like: For which, not onely the whole profeſsion f Your Eccleſiaſticall and Civile Lawyers that now re, but thoſe which ſhall ſucceed in thoſe places or ever hereafter unto the worlds end, will praiſe ndmagnifie. Your Majeſties gratious favour to- vards them, and wee that now are will pray to God for the long and happie proſeperitie of Your ighneſſe, and Your Poſteritie over us, during the ntinuance of this Heaven and this Earth, and after e paſsing away thereof, a perpetuall fruition of the new Heaven and the new Earth, wherein righteouſneſſe onely ſhall dwell for ever.

Your Majeſties moſt humble

and dutifull Subject

THOMAS RIDLEY.

TO THE READER.

GEntle Reader, I confesse I meditated this Treatise upon mine owne motion (as I doe sometimes matters of other argument, when my leasure serves mee thereto) so also I doe not set it out to the view of the world upon mine owne motion, but was desirous it should have beene kept in, saving that I must obey where I am bound. The thing that gave mee cause to this meditation, was that I saw many times how meanly men esteemed of the Civile and Ecclesiasticall Law of this Land, valuing them by the practice of so much of them, as we have among us. And therefore I thought good, although not wholly to unfold the riches of them, yet to make shew of them folded up, in such sort as Mercers make shew of their silkes and velvets, laid up in whole peeces in their shops; whereby it may bee seene, what great variety they have of all these kinde of wares, although the goodnesse of the ware it selfe cannot be discerned, because it is foulded up: Besides, seeing how frequent prohibitions are in these dayes in causes of either cognisance more then have beene in former time, I thought it not unworthy my labour to inquire and see upon what just grounds they are raised up in this multitude; not of any humour I have, to gainesay the lawfull proceedings of any Court (which I reverence and most readily acknowledge their authoritie in all things belonging to their place) but to know and search out the truth of those suggestions that give cause unto these prohibitions. For whenas such Lawes as are written of these businesses, are written indifferently, as well for the one

Jurisdiction

Iuriſdiction as the other, no man is to be offended i
the one Inriſdiction, finding it ſelfe preſſed by th
partiall interpretation (as it ſuppoſeth) of the other
inquire the ground o[illegible]nterpretation, and labou
to redreſſe it if it may [illegible]y the right interpretation
thereof: To the end, that either Iuriſdiction may retaine
their owne right, and not the one bee overtopt by the
other, as it ſeemeth to be at this day: Aud that in ſuch
matters (as they concerne) of their owne right, as
depend of no other authoritie but of the Prince alone:
which is the thing onely that is ſought in this little
Treatiſe. And therefore the Reverend Iudges of this
Land are to be intreated, that they will vouchſafe an
equall interpretation of theſe matters, as well to the
one Iuriſdiction as the other, for ſo it is comely for them
to doe; and if they doe it not, the other are not ſo dull-
ſenced, but they can perceive it, nor ſo daunted, but
that they can flie for ſuccour unto him, to whoſe high
place and wiſdome, the deciding of theſe differences
doth of right appertaine. PENELOPE *is ſaid to*
have had many wooers comely in perſon and eloquent
in ſpeech, but ſhee reſpected none but her owne
ULYSSES: *Such ſhould be the minde of a Iudge,*
that whatſoever other appearance or ſhew of truth be
offered, one ſaying, This is the trne ſence of the Law,
and an other that; yet the Iudge ſhould reſpect none but
the very true germane and gennine ſence thereof in-
deed. Which if it were religionſly or indifferently
obſerved in every Court, then needed not this complaint
that now is, but every Iuriſdiction ſhould peaceably
hold his owne right, ſuch as the Prince, Law, or
Cuſtome hath afforded unto it.

Thomas Ridley.

A VIEW OF THE CIVILL AND Eccleſiaſticall Law: alſo wherein it is ſtraightned, and wherein it *may be Relieved.*

PART. I.

CHAP. I.

SECT. I.

The Diviſion of the whole Book into foure parts.
What right or Law is in generall.
What is the Law publick, and what the Law private.
What is the Law of Nature.
What is the Law of Nations.
What is the Law Civile.

BEfore I ſhew how neceſſary it is for his Majeſty and the Realme, to maintaine the Civill and Eccleſiaſticall Lawes, as they are now practiſed among us in this Realm, I will ſet downe, as it were, in a briefe, what the Civill, and the Eccleſiaſticall Lawes are: then will

will I ſhew how farre forth they are here in uſe a
practiſe among us: thirdly wherein wee are abri
ged, and put beſide the uſe and poſſeſſion there
by the Common Law, even contrary to the o
practiſe thereof, and the true ſence and meaning
the Lawes of this Realme, and the Statutes in th
behalfe provided: and laſtly, wherein we might
relieved and admitted to the practiſe of ma
things in the Civile Law, without prejudice to t
Common Law; and ſo both the Lawes might kn
their owne grounds and proper ſubjects, and n
one to be jumbled with the other, as it is at th
day, to the great vexation of the Subject. But b
fore I ſpeake of the Civile Law in particular, I w
define what Right, or Law is, in generall: Law ther
fore is (as *Ulpian* ſaith, *L.* 10. *in fin. ff. de Juſtic
& Jure*) the knowledge of Civile & humane thin
the underſtanding of thoſe things which are j
and unjuſt. This Law is primarily divided into t
Law publick, & the Law private. The publick, is th
which appertaineth to the generall ſtate of t
common-wealth, for I meane the Law publick, n
in reſpect of the Forme, that they were public
made, as we make lawes in our Parliaments (for
all the Ciuile Law is publick, as made by publi
authority) but in reſpect of the obiect, or e
thereof, for that they concerne the Church, t
Clergie, the Magiſtrate, and other like publi
functions. none of which levell at the rule of equi
or equality between man and man, as private law
doe, but ayme at that which is moſt fit, in gener
for the common State.

What Law is.

1. *Jus publicum.*

The private Law, or the priuate mens Law, is that which concernes every ſingular mans ſtate; which, for that it is occupied in giving every man his owne, it muſt of neceſſity be proportionable to the rule of Equitie and Juſtice. 2. *Jus priuatum.*

Private Law is of three ſorts, the law of Nature, the law of Nations, and the law Civile.

The law of Nature, is that which Nature hath taught every living creature, as the care and defence of every creatures life, deſire of libertie, the conjunction of male and female for procreation ſake. The law of Nature.

The law of Nations, is that which common reaſon hath eſtabliſhed among men, and is obſerved alike in all Nations, as diſtinctions of mens rights, buildings of houſes, erecting of Cities, ſocietie of life, judgements of controverſies, war, peace, captivity, contracts, obligations, ſucceſſion, and the like. The Law of Nations.

The law Civile, being largely taken, is the law that every particular Nation frameth to it ſelfe, as the *Athenian* lawes. and the lawes of *Lacedæmon*, in which ſence alſo, the law of *England* may be called the Civile law, for that it is the proper and private law of this Nation: but in more ſtrict ſort, the Civile law is the law, which the old *Romans* uſed, and is for the great wiſdom & equitie therof, at this day, as it were, the common law of all well governed Nations, a very few onely excepted. 3 *Jus ciuile.*

And certainly, albeit ſundry other Nations by the light of Nature, have many Rules and Maximes in the Civile law: yet, if all the conſtitutions, cuſtomes, and lawes, of all other people and countries were put

put together (I except none, ſave the lawes of th
Hebrews, which came immediatly from God) the
are not comparable to the law of the *Roman*
neither in Wiſdome nor Equity, neither i
gravitie nor in ſufficiency. Whereupon it i
that moſt of other Nations, (ſaving our owne
although they receive not the Civile law whole
for their law, yet they ſo much admire the equit
thereof, that they interpret their owne lawes there
by. *Peckius de regul. juris. Reg. Quæ à jure com
muni. regul.* 28.

SECT. 2.

*That there be foure Tomes of the Civile Law; Th
Digeſt, the Code, the Authentick and the Feuds.*
The Inſtitutes are an Epitome of the Digeſt.
*What is the Digeſt, and why it is ſo called, an
why the ſame are called the Pandects.*
what are the Inſtitutes, and why they are ſo called.

THe whole Civile law it ſelfe, is reduced or
brought into 4. Tomes, whereof the firſt
containeth the Digeſt or Pandects, taken out of 27
old reverent Lawyers works, whereof ſundry were
before the coming of Chriſt; others flouriſhed in
the Emperours dayes, even unto the time o
Digeſts what. *Maximinus*, as it appeareth by *Spartianus* and
Lampridius, in the life of the ſaid Emperour: which
ſaid Tome is divided into 50. bookes, of which
every one containeth ſundry titles of great Wiſdom
and variety.

To

To this Tome, I adde the Inſtitutions, which are a brief of all the former bookes, compoſed of purpoſe by the Emperour in the behalf of young learners, that thereby having the whole Digeſt drawne into a *Compendium* of 4. bookes only, they might with more alacrity, goe forward in the ſtudy of the law: having, as it were, the firſt Elements of the whole profeſſion in this little Treatiſe; whereas otherwiſe without the help hereof, their weak minds might be clogged with the multitude and varietie thereof, and ſo either altogether leave their ſtudies, or with more labour and diffidence (which oftentimes diſcourageth young mens minds in a long matter) come to the end thereof, to which, by the direction of this brief, they might ſooner attain, and that without much travell or diſtruſt.

Why ſo called.

The Digeſts have their name, of that they are put into a comely order by the Author, ranging every booke and title into his Proper place, ſuch as either the courſe of Nature affords them, or are fitteſt for the practice of the profeſſion.

The Pandects.

The ſame booke again, is called *Pandects*, of the Greek words πᾶν & δέχομαι for that it compriſeth in it ſelf, all whatſoever *Juſtinian* drew out of 50000. verſes of the old bookes of the law.

The Inſtitutes.

The Inſtitútes are ſo called, becauſe they are, as it were, maſters and inſtructors to the ignorant, and ſhew an eaſie way to the obteining of the knowledge of the Law.

The matters wherein the whole law is occupied are either the perſons in the common-wealth, or the things belonging or not belonging to them, or

the actions whereby men doe claim in judgment such things as are due unto them by law.

SECT. 3.

The Pandects, or Digest are divided into seven parts, and they againe into fiftie Bookes.
That the first part thereof conteineth foure Bookes and what is the summe thereof.

VPon a more particular division, the whole Digest is divided into seven parts: whereof the first part, standing upon foure bookes, containeth the principles, and as it were, the fiest elements of the Law; as, what Justice & Right is, from whence the Civile Law hath his beginning, what persons be the object of the Civile law, what Magistrates the common-wealth of the *Romans* had, by whom either the lawes were made, or executed: the diverse kindes of Jurisdictions, which those Magistrates used; Meere, Mixt. or Simple, according to their place: the corrections which the law used against such as disobey the Judge, either in not appearing or not performing that which is injoyned them: what provision it made against such, as by violence rescued men out of the Judges hands: what Holy dayes there were, wherein the Courts were not held: what order the Law tooke against the plaintife that having cited the defendant, had no Libell ready to put into the Court, unlesse happely otherwise the parties upon private agreement compounded the matter between them: who where to be admitted advocats

dvocates, and what cauſes barr'd them from the office: what is the office of a Procurator, Sollicitor, or Sindict, or Factor; and under what cautions they were admitted, if they had no Proxie, or Mandat, or the partie principall did not in preſence authorize them: how they were puniſhed, who upon reward tooke upon them to vexe men unjuſtly in the Law, in manner as common Barators doe: what perſons having loſt opportunitie to alleage any thing for themſelves beneficiall in Law, may be reſtored thereunto againe; as Minors, and ſuch other, as by feare or craft of the adverſarie have beene driven away from their lawfull defence: how perſons of common truſt, as Marriners, Inholders, and ſuch like, are bound by Law to reſtore ſuch things as they have taken in charge to keepe.

SECT. 4

That the ſecond part hath ſeven bookes and what are the Contents thereof.

THe ſecond part, being diſtributed into ſeven bookes, yeeldeth matter of Judgement, as who may be Judge, and who not: where and before what Judge every one is to be convented: how many kindes of Judgements there are, Civile, Criminall, and mixt of both: by what actions things that are ours by right of inheritance may be challenged, whether they be corporall or incorporall: what action the Law affords, if any man conceale that is ours, that wee may come to the ſight there-

of: what action lyeth against him, who by evill per-
ſuaſions, or lewd inticement hath corrupted anothe
mans ſervant, or having run away by his ill counſel
hath concealed him from his maſter: what proviſio
the *Law* hath against Dice-play, and ſuch as keep
Dicing-houſes: how he is to be puniſhed, which b
ing put in truſt to meaſure any mans ground, make
a falſe report of the meaſure thereof: that no ma
hinder a corſe of a dead body to be carried to bur
all, or to be buried in ſuch places, as hee and h
predeceſſours have right unto, or to build a Tomb
to that purpoſe, and beautifie the ſame.

SECT. 5.

That the third part ſtretcheth it ſelfe into nine bookes, and what they contein.

THe third part, imbracing nine books, conce
neth perſonall actions, which riſe not of cau
of right or poſſeſſion, but of covenant and obligat
on; as things credited or lent in a certain ſumm
the means how to recover the ſame, if it be denie
that is by oath of the partie that denieth it, unleſſe
may be convicted, either by witneſſe or inſtrument, th
he hath forſworne himſelfe: how many kinds of oath
there are, voluntary out of Judgement, neceſſar
exacted by the Judge in doubtfull caſes, whe
otherwiſe there wanteth proofe to manifeſt th
trueth: Judiciall, ſuch as one partie offereth to a
other in Judgement, and cannot be refuſed witho
juſt cauſe: and laſtly, that which the Judge offere

to the plaintife, as concerning the value of the thing which is in ſtrife, or the charges that he hath beene at in recovering of the ſame: what exceptions there lyes againſt Obligations, as that which for cauſe was given, and cauſe did not follow: that the cauſe was diſhoneſt, for which that is challenged that was given; that the ſumme was not due which was paid, and therefore not to be exacted, but to be repaid: actions for things lent for a certain time, and to a certain uſe: actions for things pawned: actions that either paſſengers have againſt Marriners for the goods or ware that they have brought into the ſhip, or Marriners have againſt Paſſengers for their fraught: actions of ejectment, wherein the paſſengers and Marriners are bound each to other for contribution of the loſſes of ſuch things that have beene caſt into the ſea, in the time of a ſtorme or tempeſt, according to the qualitie or quantitie of the goods they have in the ſhip: actions whereby maſters are bound to anſwer for their ſervants contracts, and fathers for their children, in ſuch things, or negotiation, as they have put them in truſt withall, ſaving where the childe borrwed money without his fathers privitie for riot, and for ſuch purpoſe as his father hath no uſe thereof: Remedies for women, when by weakneſſe of their ſexes, and lack of counſell, they have inwrapt themſelves in ſuretiſhip for other men, action of compenſation, where a debt is demanded, for which an equivalent portion hath beene received in lieu or ſatisfaction thereof, actions of mandate, or commandement, wherein one hath done ſome worke, or

laid out ſome money upon an other mans manda or word, and yet when he requireth allowan thereof, it is denied him: actions of ſocietie fellowſhip, wherein either the ſocietie is required be maintained, or the money put in common ban to be divided: actions of bargain and ſale, eith pure or conditionall, the bargain being once mad the loſſe and gaine that after happeneth is the buye unleſſe the ſeller retain ſome further right in t thing ſold unto himſelfe: actions of letting or ſe ting either of the uſe of a perſon, or the uſe o thing upon a certain hyer: actions of change a ſuch like.]

SECT. 6.

That the fourth part conteineth eight bookes, and the contents thereof.

THe fourth part being digeſted into eigh bookes miniſtreth actions for ſuch things are acceſſarie to contracts, ſuch as pawnes an pledges are, which are given for the better ſecuriti of the contract: actions for reſtitution wherein man hath beene deceived in a bargain, more the the halfe value of the thing ſold; or wherein th ſeller hath concealed ſome fault in the thing ſol which he ought by Law to have revealed; or pro miſed ſome qualitie in the ſame, which was not i it; or where the thing ſold, hath beene evicted b an other, out of the hands of the buyer, himſel uſing all juſt defence of Law for himſelfe: action

ſo

for intereſt and uſurie, and how many kinds thereof there be that men uſe by land, Lucratory, Compenſatorie, and Punitorie; whereof the firſt is altogether unlawfull, the other two allowed where either juſt gain ceaſeth, or juſt loſſe followeth, upon that occaſion, that which is lent is not payd according to the day of covenant. Sea-uſurie, other wiſe called nautick uſurie, is greater then land-uſurie, and yet allowed by Law, for that the ſeafaring man takes upon himſelfe the danger of the tranſporting thereof, and ſecuring the ſame at ſuch place as it is appointed to be delivered. In deciding of matters of controverſie, the Law proceeds ſomtimes by witneſſes, ſomtimes by inſtruments, ſomtimes by preſumptions, where knowledge or ignorance of fact, or Law is preſumed. Spouſals are mutuall promiſes of a future marriage: marriage is a lawfull coupling together of man and woman, the company and ſocietie of the whole life, the Communion of all Divine and humane rites and things, and of one and the ſame houſe, wrought by the conſent and mutuall good will of the one towards the other: in eſpouſals and marriages is to be conſidered, who is to be joyned together, at what years, and by whoſe conſent: there doth wait and attend upon Marriages, Jointures, Dowries, and ſuch like, and ſometimes Divorce, which is ſo called of the diverſitie of the mindes of thoſe that are married; becauſe, ſuch as are divorced, goe one a divers way from the other. The cauſes whereupon Divorces grow, are Adultery, deadly hatred one toward an other, intolerable cruelty, neerneſſe of kinred and affinitie

Divorce what, and why ſo called.

The cauſes of Divorces.

affinitie in degrees forbidden, impotencie on the one ſide or the other: actions of Dowrie after divorce or ſeparation; actions againſt a mans wife imbeaſelling away his goods; actions againſt a huſband diſclayming his owne childe; and his wife being with childe, if he make doubt thereof, means how and where ſhe ſhall be kept untill her delivery, ſo that no falſe birth ſhall be put in place of the true childe; or that ſhe abuſe not her husband or the next heire, with a falſe ſhew of that which is not. Tutelage & government of children under age, which is either teſtamentarie, or due to the next of kinne, or dative, all which are either to be confirmed or diſpoſed of by the Magiſtrate. Adminiſtrations of Tutors and Curators, and how farre they are endangered by their office, and wherein they are to interpoſe their authoritie and conſent, and for what acts the pupils or minors may be ſued, done by the tutors or curators; how any may be argued to be a ſuſpected tutor or curator; and how, and by whom he may be removed, if there appear juſt cauſe of ſuſpition againſt him. A tutor is chiefly ſet over the perſon of the childe, ſecondly over his goods: but the Curator or Guardian is chiefly ſet over the goods, and then over the perſon of the childe. A childe (his father being dead) by the order of the Judge, is to be brought up with his mother, unleſſe ſhee hath fled unto a ſecond marriage, which if ſhee have done, then is he to be brought up with ſome of his neereſt kinne, ſuch as is knowne to be an honeſt man, and will have a care of his good education; with whom the Judge is to allow him ſuch maintenance,

maintenance, as all his ſtock be not ſpent therein, but ever more ſomthing be left againſt he come to full age. when the time of tutelage, or curatorſhip is ended, they are to render account unto the Judge, what they have received, and how they have expended the ſame, and what reſidue is left, and according as their prooſes are, either by oath, or otherwiſe, ſo the Judge either alloweth, or diſallo-weth the ſame. If the Tutors or Curators prove bankrupt, or unable to ſatisfie the Pupill or Minor, then lyeth an action againſt their ſuerties for the ſatisfaction or the ſame; and if both of them faile, then lyeth it againſt the Judge; or Magiſtrate, if either he have not received any caution at all of the Tutors or Curators, or hath received an unſufficient caution, or unſufficient ſuerties, knowing them to be unſufficient; otherwiſe he is not to ſecure fortune, and future caſes of the childe: the Tutors or Curators are to ſell nothing of thoſe things that are the childrens, ſaving ſuch things which by keeping cannot be kept, unleſſe they have the order, or decree of the Judge thereunto, which the Judge is not to decree, unleſſe the childe be ſo farre in debt, that it cannot be ſatisfied, without ſome part of the other goods, or there be ſome other like juſt and neceſſarie cauſe like unto this, which may not be avoided. As Minors have Curators and Governors, ſo alſo mad perſons, and prodigall perſons are appointed to have governors by law, for that they can no more governe their owne ſtate, then the others can. Prodigall perſons are they that know no time nor end of ſpending,

ſpending, but ryot or laviſh out their goods with
out all diſcretion.

SECT. 7.

That the fift part comprehendeth nine bookes, and the matter thereof.

VNder the fift Section, which compriſeth it nine bookes, are conteined laſt Wils a Teſtaments, and who they be that can make t ſame: and how many kinds there of there b Solemne or Militarie, and they either put in wri ing, or elſe Nuncupative what is an unjuſt, or Vo will: what is to be thought of thoſe things, whic are found either to be blotted out, or interlined in Will: how Heires or Executors are to be inſtitute or ſubſtituted in Wils, and under what conditio they may be either inſtituted or ſubſtituted in t ſame: what time an heir hath to deliberate after t Teſtators death, before he prove the Will: wh priviledges it hath: how the inheritance may either got or loſt: how Teſtaments are to be ope ed, publiſhed, and writ out: what mens Teſtamen are to be opened, and publiſhed: of the puniſhme of ſuch, which, a Will being extant, ſeeke Adminiſtration, or ſome other like means to poſſe the goods: and of thoſe which either forbid, compell any man to make a Will: of the power right of Codicils: of Legacies. and bequeſts;

wh

hat things may be bequeathed, and what not; o whom any thing may be bequeathed; and of he ſignification of the words, and things which oe appertain unto Legacies: of yearely and monthly Legacies, what time they be due, in the beinning of the year, or in the end: which of them e pure, and which conditionall: of any thing bequeathed: of dwelling, and workes of ſervants bequeathed, of Dowry bequeathed, and what profit he Legatorie hath thereby, or choiſe or election equeathed, of wheat, wine, and oyle bequeathed, nd what is contained under every of them: of round furniſhed bequeathed, and the inſtruments hereto belonging, and what is to be underſtood by hat bequeſt: of ſtore bequeathed, in Latin called *enus*; what is compriſed under that word: of ouſhold-ſtuffe bequeathed: of education, and ringing up bequeathed: of gold, ſilver, womens ttire, ornaments, and ſuch like bequeathed, and hat is to be underſtood by every of them: how egacies may be taken away: of things that are oubtfull in a Will, and how they are to be underood: of thoſe things that are left for puniſhment ke in a Will, whether they be available, or otherviſe: of thoſe things which being bequeathed in a Vill, are counted not withſtanding as not bequeathd, of thoſe things that are taken away from the egatories in the Will, as unworthy of them: of onditions, demonſtrations, and cauſes; what force hey have, and how they prevaile in a Will. Of the aw *Folcidia*, what it is, and how men thereby re reſtrained from bequeathing any more then

three

three parts of their goods, ſo that a fourth pa
thereof ſhould ſtill remain with the heire; and
any man had received in Legacie more then h
might by the law *Folcidia*, that hee ſhould put i
band to reſtore that, if any unknown debt aft
ſhould appear, ſo the ſame were true debt: at wh
day a Legacie becomes due; that is ſtreight fro
the death of the Teſtator, unleſſe it be left to b
paid upon a certain or uncertin day, or under
condition; and that the heire enter into band t
pay the legacie when the day comes, or the co
dition happen; and if he refuſe to doe it, then th
legatorie to be put in poſſeſſion thereof untill th
day or condition happen.

SECT. 8.

That the ſixt part is ſpent in ſeven bookes and the ſubject thereof.

Of Adminiſtration.

The ſixt part ſpreading it ſelfe over ſeve
Bookes handleth matters of poſſeſſion
goods, or Adminiſtration thereof, not growing ou
of the Civile Law (which onely makes heires,
giveth right of ſucceſſion) but out of the Pretoria
law, or law of conſcience, which in equity callet
ſundry to the ſucceſſion of other mens goods b
adminiſtration, where there is no Will, and in ſom
caſes where there is a Will, as where the Will i
concealed, or the Executor renounceth the Wil
but if the Will once appear, then the adminiſtra
tion forthwith ceaſeth. In caſes where Adminiſtrati
on

ns are to be granted, the children of the deceaſed ave liberty to take it, within a year after the death f the deceaſed, and if they be further off of kin, hen they have only a hundred dayes to take it in, nleſſe thoſe which are to take it are infants, mad, eaf, dumbe, or blind, in which caſes there is a onger time aſſigned. The Pretor granted admini- raitō not only according to the tables of the Teſta- ent, but many times even againſt the tables of the eſtament: as where a childe is not diſinherited in is Fathers Will by plain termes, but paſſed over with ſilence onely, as not remembred; or that the hilde was not borne at the time of his death, & ſo ot known whether any ſuch child were living, or o be hoped for, or not: In which caſe, if it doe after ppear, the Mother is put in poſſeſſion of that which s the childes part. If there appear no Will, the Ad- miniſtration is committed in this order; Firſt, the children of the deceaſed are admitted: Secondly, thoſe that are next of kin in the Male line: Thirdly, thoſe that are next of kin in the Female line, (which difference notwithſtanding betweene male and Female at this day is taken away, and they that are next of kin are equally admitted in either ſex) Laſtly, comes thoſe which have right thereto, either in that they are man or wife, The Law ſundry times, where a thing is done, or intended to be done, againſt an other mans right, & there is no proviſi- on for it in Law, yeeldeth the party grieved an Interdict or Injunction to hinder that which was intended to his prejudice, As where one buildeth an houſe contrary to the uſuall and received forme of building,

building, to the injurie of his neighbour, there lye
an Injunction *de novi operis nunciatione*, which
ing once ſerved, the offender is either to deſiſt fr
his worke, or to put in ſuerties, hee ſhall pul
downe again, if hee doe not within a very ſhort ti
avow the lawfulneſſe thereof. Again, there lyeth
Injunction where hurt is not yet done, but feared
be done; as where a houſe is ruinous, or the e
or any outcaſt worke thereof hangeth dangerou
over the way, ſo that it is doubted it will fall & h
ſome that paſſe by, the owner or Lord thereof is
put in ſuertie to the Magiſtrate, that if any be hu
or miſcarie thereby he ſhall anſwer for it. If a
cauſe the water of the river, or rain-water to r
an other courſe then before time it was wont
doe, and that the neighbours are like to be pr
judiced thereby, the Law yeeldeth an Injunctio
either to ſtay the worke that is intended, or
ſecure the neighbours for the hurt that is like
follow thereupon. If Cuſtomers, Collectors,
Tolle-gatherers exact more ſubſidie, or other li
publick duties, then by Law they ought; or diſtra
any mans goods, upon pretence thereof, or ſtay
their hands ſuch duties as they have receiv
wherby the partie that hath paid it, falleth into a
forfeiture, or that they repair not the publick hig
wayes, in which reſpect ſubſidies, tributes, and oth
ſuch like duties are given to Princes, they are to b
puniſhed in the double value of that which th
have received, & otherwiſe to be fined for their i
dealing in that behalfe. In gifts which are pure
given, or under a day, or condition, and ſpeciall

thoſe that are given in contemplation of death, hich are compared to Legacies themſelves, a right aſſeth without deliverance, and giveth ſufficient atter of challenge unto him, to whom they are ven. The means or wayes whereby the Lordſhip right of any thing is gotten, be it naturall, as by e firſt occupying the ſame, by finding the ſame, by inging it into a forme or faſhion, by gaining by e ſea or river, by delivery, or ſuch like: or, be it by vill means, as by getting the poſſeſſion of any thing good title, and good faith, ſo long as it will make juſt uſurpation, or preſcription, by holding it as eire, by holding it by a gift, by taking it up as a ing forſaken, by holding it by legacie, dowrie, or heritance, by coming to it by ſentence definitive, r inter locutory, by confeſſion of the adverſary, by eſſion of the partie, by auctority of the Judge, and e ſame have bin fraudulently alienated by the ebtors, there lieth an Injunction to put the partie jured into Poſſeſſion. All Injunctions for the moſt art are prohibitorie, & ſerve either to get, or to ecover poſſeſſion, and are called commonly by the rſt name of the writ, as where one is denied the oſſeſſion of inheritance belonging to him, an njunction is granted him, to put him in poſſeſſion, alled *Quorum bonorum*; or if it be for a legacie, *Quod gatorum*; and if it be in generall caſes, *Ne vis fiat ei ui in poſſeſſionem miſſus eſt*: That he that hath otten the cuſtodie of the Will exhibite it: that no rivate building, or ſuch like, be ſet up in a holy and anctified place, and if it be, that it be pull'd downe gain: that no Nuſance be done in publick places,

or

or high wayes, other then ſuch as by the Law
allowable: that publick high wayes be repair
that nothing be done in any river, or the ban
thereof, whereby Ships or Barkes may
paſſe thereon: that no thing be done in
common ſtream, whereby the water ſhould
forced to run otherwiſe this year, then it did
laſt ſummer afore: that it may be lawfull for ev
man to ſaile or rowe in any publick ſtream: that
bankes of the river be repaired. Of force, and fo
armed, where two are in poſſeſſion of one thing,
neither of them came by the ſame by force, or
ſecret ſlight, or by ſufferance of an other, there
eth an Injunction for continuance of their poſſeſſi
called *uti poſſidetis*: That a man may uſe ſuch priv
way, as he hath uſed the year Paſt, and repaire
ſame without interruption of an other: That
man turne away the daily running water, or
water which fals in Summer from an other m
houſe, or ground to his hinderance: That wat
courſes in rivers, and other like places be mainta
ed: That ſuch as have right to draw water out
any ſpring, or well, be not forbid the uſe there
and that every one have free liberty to cleanſe, pu
& to repaire the ſame, if there be any decay in
That no man be forbid to ſcoure, purge, or clea
his privies, ſinkes, or vaults: That whatſoever
done by open force, or ſecret ſubtilty, be reſtor
where it was, before ſuch force or ſubtilty w
done, unleſſe the partie grieved releaſe the ſam
That he that holds any thing at an other mans wi
reſtore the ſame upon competent warning,
knowled

knowlege given him thereof: That a man may lop or cut the boughes of an other mans tree, annoying his ground, if after warning given thereof, the owner thereof do not reforme it. That it be lawfull for a man to gather ſuch fruits of his, as fall from his own tree in to an other mans ground, without any trepaſſe to the owner of the ground, ſo that he gather the ſame within three dayes after they are ſo falne; or otherwiſe the law preſumes he makes no reckoning of them, and fruits lying upon the ground do eaſily putrifie: That a man may challenge his children out of an other mans hand that holdeth them from him: That a Tenant after his leaſe is expired, may remove, and quietly carrrie away ſuch things from the farme, as he brought thither, ſo that the rent be paid, and thoſe things which hee brought thither,, were not bound for the payment thereof. Actions are taken away, and poſſeſſions maintained by exceptions, præſcriptions, and prejudices, which themſelves are many times in ſteed of actions, as is the exception *de re indicata*, which is an exception that determineth the cauſe in controverſie. Of exceptions, ſome are perpetuall and peremptory, ſome are temporall and dilatory: Perpetuall and peremptory are they which evermore have place, and can never be avoyded; Temporall and dilatory are they, which are not evermore in place, but may be avoyded: Exceptions are alleaged, either becauſe that is done which ought to be done, or that is done that ought not to be done, or that is not done that ought to be done. Of Præſcriptions likewiſe ſome are perpetuall, ſome temporall; the effect of either

Exceptions.

Præſcriptions.

either of them, is to determine the action, either in the maner of doing, or by the time when it was done, or by the place where it was done, or by some other like circumstance.

Obligations. An Obligation is a bond of the Law, whereby a man is necessarily bouud to pay some thing to an other man: Obligations arise either out of bargain betweene man & man, or out of some offence that is done: Obligations by bargains, are procured either by some thing that passeth betweene the parties that doe contract, or else is effected by words, or consent. Out of obligations spring actions, which are nothing else, but a right to prosecute that in judgment, which a man pretendeth to be due unto him, whereof there are two sorts; of which, one is a challenge for right of a thing due, the other, a suite against a person for some offence or trespasse done.

SECT. 9.

That the seventh part is divided into six bookes, and the matter thereof.

THe seventh and last part being divided into six Bookes, treateth of Obligations, which stand in words, and their effect: how farre two or more principall debtors are bound to the creditor in the whole, or every one for his owne part: Of Suerties and how farre they are bound, and whether the discharge of the one be the release of the other, and by how many wayes Obligations bred, word

words are diſſolved or releaſed, by renovation, by acceptation of the debt not paid, as if it were paid. Of Obligations ſome are Civile, as thoſe which have beene heretofore handled, ſome Pretorian or pertainining to the Chancery, as thoſe whereby Tutors, Curators, and Proctors, enter into band unto a child, that his ſtate ſhall be ſafe, that is committed to their hands: That, that ſhall be paid which the Judge ceaſeth: That the Plaintife ſhall ratifie and allow that which his Proctor ſhall doe for him in jndgement, and ſuch like, Criminall Judgements are private or publick, that is they are commenced either upon private offences, or upon publick faults and ſuits. Private offences concerne private mens revenge and injuries. Publick, the revenge or injurie of the whole ſtate. Private offences which had ordinary proceedings, and ordinary puniſhment, were many, among which Theft is the chiefeſt, which is a deceitfull fingering of an other mans goods, with intent to gain either the thing it ſelfe, or the uſe or poſſeſſion thereof; ſo that the mind alone maketh not theft, but the act joyned to the minde, be the quantity never ſo ſmall. Of Thefts, ſome are manifeſt, other not manifeſt; manifeſt is that, wherein the offender is taken in the deede doing, or taken before he could carrie away the thing ſtolne thither, whither he intended: the puniſhment whereof was foure double the value of that which was ſtolne: Not manifeſt, was that wherein the party offending was not taken in the deede doing; and the pain thereof was the double of that which was purloyned, or taken away. If any pilfery or theft be done

Private offences.

in a Ship, Taverne, or *I*nne, the Maſter of the Ship, Taverne, or *I*nne, is to anſwer double the value thereof, if the ſame be done by himſelfe, or their ſelves, or any of their marriners or ſervants: for it behoveth them to have honeſt men, whom they are to imploy in ſuch ſervices: But if it be done by any of the paſſengers, or gueſts of the houſe, the owners of the Ship, Taverne, or *I*nne, are not to anſwer for the ſame, for they cannot turne away ſuch gueſts as come into their houſe; neither, in all likelihood know they the quality or condition of their gueſts. *I*f any man privily, unwitting the owner thereof, cut downe, hack, or barke any tree of any ſort whatſoever, or thoſe that are of the nature of trees, as *I*vie, Reedes, Willows, ſo that they be ſpoyled, he is to anſwer the double value of that hee hath cut downe and ſpoyled: and further, if it be a Vine-tree to be puniſhed as a robber. Hee that taketh any thing away from another by violence, is to be puniſhed in the worth foure fold, for that it is a ſin more grievous than theft, *I*f any man upon any ill intent make a Tumult, whereby any hurt commeth to any man, he ſhall anſwer double of that the party is harmed in: *I*f any, upon a burning of a houſe, or the fall thereof, or upon a ſhipwrack, or the ſpoyling of a boat or ſhip, ſteale any thing away, or being put in truſt to keepe any thing thereof, conceale the ſame, hee ſhall pay the foure double of the ſame; but if any man ſet the ſame afire himſelfe, he is either to be caſt out to wilde beaſts, or is to be burnt with the ſame fire he went about to burn an other with. *I*f any have ſpitefull, contumeliouſly injured an other

man

man, his wife, or children, in deede, word, or writing, they are to forfeit ſo much as the partie greeved ſhall eſteeme himſelfe injured by, or the Judge ſhall taxe it at. A famous Libell is where a man hath of malitious purpoſe writ, compounded, or ſet out any thing to the infamie of an other, without a name, or with a name, and the puniſhment thereof is death, and anciently was that he loſt the power or liberty to make a Will; the like puniſhment followeth him, that having found an infamous *Libell, doth* not by and by ſpoyle the ſame, that the knowledge thereof come not abroad, eſpecially where the matter thereof is capitall or worthy death. *Libel what.*

Extraordinary crimes, are thoſe which have no ordinary puniſhment appointed them, but are arbitrarie at the Judges appointment, ſuch as are ſollicitors of other folkes wedlockes, and Maides haſtities, although they miſſe of their purpoſe; ſuch as of purpoſe caſt myre, durt, or any like filth upon another, to the intent to diſgrace him: ſuch as, being with childe, of purpoſe cauſe themſelves to miſcarry: Such as keepe brothell and baudy-houſes, or other unlawfull company: Juglers, and ſuch as carry about Snakes, and other like Serpents and trumpery to put men in feare: Such as hide and oppreſſe Corne, to cauſe the price to be dearer: ſuch as either make, or uſe falſe weights wittingly; for all which, becauſe there is no proper puniſhment provided in the Law, they are referred to the puniſhment of the Judge, who is to puniſh them according to the quality of the fact, age, and underſtanding of the offender, and other circumſtances accord- *Extraordinary Crimes.*

ing as he ſhall thinke good; ſo, notwithſtanding tha
he exceed not a convenient meaſure therein, neithe
ſtretch the ſame to death but upon ſome great an
weighty cauſe, he is to be content with meane
puniſhment, as temporall baniſhment, whipping, o
ſome moderat pecuniary mulct. For violating o
defacing another mans ſepulchre, Infamy was im
poſed, beſides a pecuniary mulct to be divided be
tweene the Prince and the party grieved, but if an
dig up the corſe of the deceaſed, the puniſhment
death. If any, by feare of his office or authorit
wring any. money from any man, or exact mo
fees in any matter then he ought to doe, or cau
him to marry, or doe any other thing he would n
doe, the forfeiture is foure double the value of th
which hath been taken, beſide further puniſhment
the diſcretion of the Judge. Such as drive me
cattell out of their ground, or ſever them from th
flock or herd, with intent to ſteale them, if they do
it with a weapon like unto a Robber, are condem
ed to be throwne to wild beaſts, otherwiſe are mo
lightly puniſhed according to the diſcretion of th
Judge. Such as in Judgement take money on bot
ſides, or taking upon them the defenee of one ſid
betray the cauſe, and take mony on the other ſid
are infamous by law, and are puniſhed at th
diſcretion of the Judge. *S*uch as receive theeve
and other like malefactors, are puniſhed in like ſo
as the theeves or malefactors themſelves are; e
pecially if they have aſſiſted them in their wicked
neſſe: otherwiſe, if they onely knew it, & receive
them, they are more mildly to be puniſhed, eſpecia
ly if the offenders were their kinſmen: for, the
offen

offence is not like theirs, which entertain thoſe, which are no kin to them at all; when as it is naturall for every one to regard his owne blood: and fathers are many times more carefull for their children, then for themſelves; but if that hee that received them knew nothing of the offence, then is he altogether to be excuſed. Such as break priſon, are to be puniſhed by death, becauſe it is a certain treaſon to break the Princes ward, but if they ſcape by the negligence of the Keepers, againſt whom the preſumption lyeth ever in this caſe, they are more lightly to be puniſhed. If any commit Burglarie, breaking up a doore or wall, with intent to doe a Robbery, if they be baſe companions, they are to be condemned to the Mynes or Gallies; but if they be of better reckoning, they are to be put from the ranke or order wherein they are, or to be baniſhed for a ſeaſon. Juglers and like Impoſtors, which goe about deceiving of the people with falſe tricks and toyes, hookes and ſuch like, which inſinuate themſelves into other mens houſes, with purpoſe to ſteale, are puniſhed at the diſcretion of the Judge.

If any ſteale, or take away any thing out of the inheritance of another man, before either the Will be proved, or adminiſtration be taken; an action of theft lyeth not, becauſe the inheritance, during the time, was counted no bodies, but he is to be puniſhed by the diſcretion of the Judge; yea, though it were the heire himſelfe that did it. Coſenage, whereby a man craftily ſuppreſſeth ſome thing he ſhould not, or putteth one thing in anothers place, to the deceit of him that hee dealeth withall, or corrupt-

eth ſuch wares which hee uttereth, or doth a
other thing colluſorily, which is called of the La
Crimen Stellionatus, (of a little vermin or creatu
Crimen Stellionatus. called *Stellio*, much like to a Liſard, moſt envious
man) is cenſured by ſome ignominious & ſham
puniſhment, or by diſgracing the perſon, by putti
him out of the Office, Place, or Order he is in,
by injoyning him ſome ſervile worke, or by baniſ
ing him for a time, or by ſome like puniſhment,
the diſcretion of the Judge. If any plough up a Me
balke, or remove any other marke which hath a
cuſtomed to be a Marke or bound betweene grou
and grounds, which anciently was counted revere
and religions among men, the offence is puniſh
either by a pecuniarie mulct, or by baniſhment,
whipping, at the diſcretion of the Judge. Unlawf
Colledges Corporations, and aſſemblies, gather
together to bad uſes, as to eating, drinking, wa
tonneſſe, conſpiraeie, are puniſhed as publick Rou
or Riots, otherwiſe at the diſcretion of the Judg
All theſe, before recited, are called Popular Action
becauſe, not onely he that is injured, but eve
other honeſt ſubject may purſue and proſecute t
ſame.

Publick Judgements. Publick Judgements are ſuch, which immediat
pertain to the puniſhment of the common-weal
for example ſake, and are examined, tried, a
puniſhed by a publick order appointed by Law, t
partie grieved, making himſelfe partie to the ſui
and following the ſame; the party accuſed in t
meane while remaining in priſon, or putting in ſuf
ties for his appearance, and the partie grieved f
th

be proſecuting of the ſame. The chiefeſt of which ort is Treaſon, which is a diminiſhing or derogation of the Majeſtie of the people, or Prince, on whom he people have collated all their power, which is uniſhed with death, and confiſcation of the offender, and the eternall aboliſhment of his memorie. The next is Adultery, which is violating of an other mans bed, whoſe puniſhment anciently was death, both in the man and in the woman, but after it was mitigated in the woman, ſhee being firſt whipt, and then ſhut up in a Monaſterie: but by the Canons, other paines are inflicted. Vnder Adulterie are contained Inceſt, Sodomy, Baudery, and all the reſt of the ſins of that kinde. Publick force, is that which is done by a company of armed men, collected together, and the correction thereof is perpetuall baniſhment. Private, which is done without Arms, the paine thereof is the loſſe of halfe the parties goods, and the infamie of his name. Murtherers and Poyſoners, Witches and Sorcerers, the crime being proved dye the death: ſuch as ſet mens houſes a fire, are to be conſumed with fire themſelves: ſuch as kill either Father or Mother, or thoſe that are in the place of Father or Mother, or any that are of next a kin, their puniſhment is death; and in caſe of the Father and Mother the pain of death, the Parricide being firſt well whipt, ſo that the blood doe follow in good plenty, hee being ſowed up into a ſack, together with a Dogge, a Cock, and an Ape, is thrown into the depth of the Sea. Such as make falſe Certificates, forge falſe Wils, Depoſe falſe wittingly, ſuborne witneſſes, take money either to ſay, or not

to

to ſay their knowledge of that which they are d
manded of in Judgement, corrupt Judgement,
cauſe it to be corrupted, interline, put in, or r
out any thing out of any writing, that the tru
thereof may not appear as it is written, ſuppr
Wils or Teſtaments, or other like writings, counte
feit other mens hands and Seals, open any mans W
yet living, and impart the ſecrets thereof to t
parties adverſarie, unſeale ſuch inſtruments or wr
ings, as are left with him to keepe; bequeath un
themſelves Legacies in an other mans will. witho
his good will and privitie; waſh or clip gold,
ſowder therein any corrupt mettals, make baſe ſil
money; pretend themſelves to be Noble men
Gentlemen, whereas otherwiſe they are but b
perſons; wilfully challenge unto themſelves an oth
mans name, or Arms; cog and foiſt in womens
bours or otherwiſe, falſe births, or adulterous ch
dren, in ſteed of true and rightfull heires; ſell o
and the ſame thing to two men, carrie about f
Paſports; uſe falſe Meaſures, or corrupt thoſe th
are true, in ſome caſes, are puniſhed by death,
other by baniſhment, impriſonment, or cutting
both or one of the hands of the offender. *If a*
bearing any publick office, abuſe the ſame to ga
and doth that for money, which he ought to d
for thankes, the Law ordereth, that the offend
ſhall be called to account for his ſuppoſed bribe
and if hee be found guilty thereof, fineth him fou
fold to the party grieved, and beſide, decreeth hi
to be baniſhed, Such as by ill deviſes and polici
raiſe up the price of corne, and other victuall, or

e whole ſale of any merchandiſe into their hands, at they may ſell it the dearer, are puniſhable at the ſcretion of the Judge, which according to the ality of the perſon and fact, reacheth ſomtimes to niſhment, ſomtimes to death it ſelfe. *If* any take, rloyne, or intervert to his own uſe any money de- cated to holy and publick uſes, or cauſe the ſame be taken, purloyned, or interverted; or if any take way any braſen table, wherein any publick Lawes e graven, or the bounds of any Lands are deſcrib- , or blot out, or change any thing thereof, or vetouſly pay in leſſe money into the Exchequer, en by right he ought to have done, and hath not eered with the Exchequer for the reſidue, is to be ndemned in the three double of that which is the fidue. and is beſide to be baniſhed.

If any, to get an Office, procure a number of hired ices, beſides the loſſe of the Office he ſueth for, his niſhment is temporall baniſhmẽt. If any ſteal away y childe, the body of any free-man, & ſell the ſame way, or detein them againſt their will, the fault is ath. If any ſlanderouſly charge an other with any lſe crime, or wittingly bear any falſe witneſs againſt m, or willingly give any wrong Sentence againſt m; or on the contrary ſide, diſſembleth ſuch ults as he knoweth, and colludeth with the adver- ry, or giveth over the proſecution of a crime hee th undertaken to follow, untill he have leave anted him by the Judge, to deſiſt from his accuſa- on, the ſame is to be puniſhed with the like kinde puniſhment, that hee would have the other pun- hed by, unleſſe he be acquitted there-from by the

Princes

Princes pardon; or that the Adverſarie be dead. In publick Judgements where the Offender appeares not, Proces is to be awarded out againſt him for his appearance, by a certain day to cleere himſelf; at which day if he appeare not, an Inventory is taken of his goods, not to the Intent they ſhould be ſpent, but that they ſhould be reſerved to his uſe, if hee returne again within a year, and cleere himſelf; otherwiſe they become the Exchequers for ever, how innocent ſoever the party afterwards appeares to be. If the Offender be preſent in Judgement, and deny the fact, he is to be confuted by witneſſes, and other proofe; or if there be juſt matter of ſuſpition to be put on the rack; which, albeit in matters of leſſe danger, is great cruelty, yet in great and horrible crimes it is neceſſary: If the Offender have either confeſſed the crime, or be convicted thereof, then followeth, that the party convicted, be puniſhed either by death or otherwiſe, according to the quality of the perſon, or condition of the offence. Puniſhments by death are foure, Hanging, Burning, Heading, and caſting the Offender to be devoured by wilde beaſts, amongſt which may be reckoned Exile or Baniſhment, for that it takes away a man's liberty, and bereaves him of his country, which to every good ſubject, is as dear unto him as his life it ſelfe.

Puniſhments which did not inflict death, were many, & ſuch as it pleaſed the Magiſtrate in his diſcretion to appoint. The Law having paſſed upon the Offender in ſuch ſort, as ſhould be to the loſſe of his life, liberty, or countrie, his goods became forf

thwith forfeited to the Prince, ſuch (I mean)
are of value: but for the other, the Law allow-
them the priſoner, for his maintenance during
time of his impriſonment, and ſatisfying ſuch
s as are due to the Officers thereof; which hath
ce where the offender hath no childrē, otherwiſe
halfe of his goods commeth to his children,
leſſe it be in caſe of Treaſon, where all is con-
ated. They are alſo held for convict and guilty,
ich either upon a guiltineſſe of minde make a-
y themſelves before Judgement, or ſtop their
verſaries with a bribe, that they ſhall not follow
Law againſt them, and their goods are no leſſe
nfiſcat then the others. But it is otherwiſe in
oſe which are baniſhed for a time, or to a certai-
place, or in ſuch as the Law having once paſſed
on them, are either in their life, or after their
ath, by the bounty and mercy of the Prince re-
red; in which caſe they recover Goods, Name,
d Honour: the body being executed, the carcaſſe,
the moſt part, is granted to buriall, unleſſe it be
matter of Treaſon, or other ſuch like offence. If
y have beene unjuſtly condemned, either by the
quity or unskilfulneſſe of the Judge, the law
oweth him an appeale, that is, a provocation to
igher Judge, that he may hear the cauſe anew,
d reforme that which is judged amiſſe into
tter: and if the higher Judge finde the partie
ieved hath well appealed, he is to reverſe the for-
er ſentence, otherwiſe to ſend the Offender back
the Judge, from whence he came, there to receive
s puniſhment: yet ſome perſons there be, from
whom

whom no appeale lyeth, as from the Prince, Senate, becauſe they repreſent the Prince; neit may hee appeale, which hath renounced his appe Appeales are made from lower Judges to high and from him that is Delegated, to him that Delegate: Appeales are to be made within ten d after ſentence given, or within ten dayes after Notice is come to the party againſt whom the S tence did paſſe, unleſſe there attend there continuall griefe, in which caſe, a man may app ſo long as the griefe indures: the time to Dimiſſorie Letters, is rhirty daies from the Sente given; the time to preſent the ſame to the Ju is at the diſcretion of the Judge from whom; time of proſecuting the ſame is a year, or, upon cauſe, two years; in which time, if the ſute be ended, the cauſe is deferred, and to be ſent back u the Judge, from whom the Appeale was firſt m while the Appeal hangeth, nothing is to innovated, becauſe by the Appeale, the Jud hands are, as is were, bound: but if the for Sentence were voyde by law, (as in ſundry c they are) then there needeth no Appeale; for ſ Sentences never paſſe into a caſe judged. Appe in criminall caſes, cannot be juſtified by a Proc but it is otherwiſe in Civile Cauſes. An Appeale one cauſe doth not exempt the party appell from his owne Judge, in other cauſes: If the pellant die during the time of the Appeale, and le no heire behinde him, the Appeale ceaſeth; but i leave an heire behinde him, and the matter of Appeale concernes none but himſelfe, he is not

e compelled to follow it, for every one may renou-
e his owne ſute: but if it concerne the Exchequer,
any other body, then may hee be compelled to
llow it.

The Exchequer is the Princes Treaſurie, and the
trimony of the common-wealth, and hath many
d ſingular prerogatives, which private men have
t. Such as are taken captive by the enemy, be-
me their ſervants, who have taken them, unleſſe
her they eſcape home again themſelves, or be
nſomed by their friends; in both which caſes,
ey recover all right and priviledges they had in
eir owne common-wealth before. By the Law, all
bjects whatſoever, are bound to ſerve the
mmon-wealth in warre; in ſo much that if any,
ing preſt, withdraw himſelfe, or his childe from it,
is to be counted as a rebell, and for his puniſh-
nt, is to be baniſhed, and mulcted or fined in the
eateſt part of his goods. As the priviledges and
wards of Souldiers were many to encourage
em to vertue and manhood; ſo their ſhames and
niſhments were great, to feare them from
wardice and vice: But among the reſt of the
iviledges of Souldiers, the old Souldiers were the
eateſt. Of Subjects, ſome dwelt in Shires, and lived
er their owne Lawes, and yet nevertheleſſe were
ade partakers of the honours of the Citie: ſome
her were inhabitants onely in the common-
ealth, and had onely a houſe in the ſame place to
well in, and had no right to bear office: ſome other
ere ſtrangers brought in, which were ruled by the
w of them among whom they dwelt. Amongſt
thoſe

those that dwelt in Shires, the chiefest Magistr
was he whom they called *Decurio*, who was
sent by the people of Rome thither (for he w
Magistrate of Magistrates) but elected by the peo
there; and his office was, to keepe treasurie of
Countrey to provide victuall, exact tribute, &
vern the state there, in maner as out Sherifes
here: his office was only *annual*, left by liberty, &
of goverment, and continuance thereof it m
grow into a tyrannie. Such as are *Subjects*, are
serve the common-wealth in such offices, places,
services, as their abilitie is fit for, and the necessiti
the common-wealth requires. The services of
common-wealth were of three sorts; Patrimoni
such as belong to every mans patrimony to p
forme, which stood chiefly upon payment
charges, which were to goe out of every man
heritance towards the performance of such burt
as lay upon him by law, custome, or command
him that had power thereto: Personall, which w
to be performed by the care and industrie of
partie and his corporall labour, without expenc
his purse. Mixt, which required both care of
minde, and labour of the body, and expence of
purse, and are imposed a well in consideration of
thing, as the person, which every subject i
undergoe, unlesse by the Law, or by the indulge
of the Prince they are excused; as some are excu
by reason of old age, some by young age, some
their calling, some for their state of body, some
that they serve in the necessarie services of the co
mon-wealth at home, or abroad, as Embassado

lo, ſome for that they are in neceſſary places of ervices for Gods Religion, as cathedrall Churches, nd other Churches are; ſome for that they are of ood and neceſſary places for Seminaries for the ommon-wealth, for learning and ſuch other im-loyments, as Colledges, Societies, and Schooles of arning and nurture are. Legates and Embaſſadours ad immunitie from all publick ſervivices, not onely he time of their embaſſage, but alſo two years after heir returne; They were called Legates, in that they ere choſen as fit men, out of many; their perſon as ſacred both at home and abroad, ſo that no an might lay violent hands on them without reach of the Law of Nations. Such as are Magi-rates of Cities ought ſo to governe, that no negli-nce may bee juſtly imputed unto them, other iſe they are to anſwer it, and that when their ffice is expired, they give up a juſt account, both what they have received, and what they have yd out, and pay in the reſidue, if there bee any. overnours of Cities, together with the conſent of e Burgeſſes thereof, may ſet downe ſuch orders d decrees as are for the benefit and well ordering ereof, which are to be obſerved of all thoſe which e Inhabitants thereof, and being once well and ely ſet downe, are not to be reverſed, but to the od of the Citie or Commonalty. New publick orkes, ſuch as are good for the Common-weale, ery one may make without the leave of the Prince, leſſe it be done for æmulation, or cauſe of diſcord; t for old works, in which ſtands the ſecurity of e Common-wealth, as Caſtles, Towers, Gates,

and Wals of Cities, nothing is to be done or i
novated in them, without the Princes warra
neither is it lawfull for any man to grave his na
in any publick Worke, unleſſe it be his, at wh
coſt the worke is done. Faires are authorized
Princes onely, and are invented for trade of m
chandize, and uttering of wares which Countr
men have cauſe to buy, or ſell: and have their p
viledges, that no man in any Faire can be arre
for any private debt, they were called *Nundinæ*,
cauſe that among the *Romans*, they were ancie
holden in one place or other upon every ninth d
Hee that for ten years ſpace intermitteth to uſe
Faire, loſeth the priviledge thereof. If any make a
promiſe to a Citie or Common-wealth, to do a
thing upon certain cauſe, as that hee might be m
Conſul, or that he would repair ſome part of
Citie that was burnt, he ſhall, by the Law, be co
pelled to performe his promiſe; for it is not m
that ſuch promiſes ſhould be ſatisfied with rep
tance. Such as profeſſe liberall Sciences in any C
mon-wealth, whereby youth is inſtructed,
brought up to knowledge, or be School-maſt
or Profeſſours of Phyſick, or be Midwi
Notaries, Auditors, or Caſters of accounts,
Regiſters, the Law alloweth, not only a compe
ſtipend in recompence of their skill & paines,
alſo affords them means, how the ſame may
recovered if it be denied. But as for Philoſophers
Lawyers, the Law hath appointed them no ſtip
not becauſe they are not reverend Sciences,
worthy reward or ſtipend, but becauſe eithe
th

hem are moſt honourable profeſſions, whoſe vorthineſſe is not to be valued or diſhonoured by noney: yet in theſe caſes many things are honeſtly aken, which are not honeſtly asked; and he Judge may according to the quality of the auſe, and the skill of the Advocate, the cuſtme of the Court. and the worth of the matter that in hand, appoint them a fee anſwerable to their lace, as alſo to ſuch as are Interpreters betweene arties in matters of traffick, when one underſtands ot an others language.

CHAP. II.

SECT. 1.

The ſecond Volume of the Civile Law, is the Code, which is diſtributed into twelve Books. Why the Code is ſo called.

THe ſecond Tome of the Law, is the Code, and ſtands in twelve Books, whereof eight, for e Titles, follow in a manner the order of the igeſt, a few titles onely excepted, which are added, ſides thoſe of the Digeſt; but as for the foure her, which are the firſt, the tenth, the eleventh, d the twelfth; although the ſubject they treat of named in the Digeſt; yet the things which are ere named, are not handled in the Digeſt; and erefore will I paſſe over thoſe eight other, leſt ppely I might ſeeme to doe one thing twice, and erefore will I referre the Reader over to that hich hath beene ſaid of them before, in the handl-

ing of the Digeſt; for they are almoſt twinnes of one mother; ſo that whoſoever knowes the one, ſhall with no great difficulty diſcerne the other, and come to the other foure; yet not mentioned there But yet before I lay open the matter thereof, *I* will in a word or two ſhew why this Volume of the Law is called the Code, who is the author thereof and out of whom it was collected, what moved the author, after ſo many learned titles ſet downe before, of ſuch things as are in the Digeſt deduced, by ſuch a number of worthy Lawyers (as the Laws of the Digeſt themſelves doe by their inſcription ſhew; for every law, carrieth with him in his forehead, the name of his Author) to make a new flouriſh of the ſame, and what the knowledge of the Code doth conferre unto a Student or practiſer of the Law, more then the knowledge of the Digeſt doth.

Why this Tome of the Law is called the Code.

The Code therefore is named of the word *Caudex*, that is, the trunke or timber of the tree from which the barke of the tree is pill'd or pull'd off, of which men anciently uſed to make writing tables, artificially binding them up into the forme of a booke, and uſing them for bookes, before the uſe of paper or parchment was knowne; inſomuch, that many of theſe tables being bound together, they were called a Code, or booke: beſides, whereas the ancient Lawyers before *Juſtinians* time, uſed to write their pleas and anſwers in ſcroules of paper or parchment, *Juſtinian* himſelfe firſt put them in booke, and therefore termed them by the name of Code.

What the Code is.

The Code it ſelfe is compiled of the anſwere of ſe Emperours

Emperours, and their wiſe Councell, whereof ſundry were learned and skilfull Lawyers, as the ſtorie of that time doth ſhew, and the lawes themſelues doe name ſome of them, as that moſt excellent and famous man *Papinian*, and ſome others; that is, from the dayes of *Adrian* the Emperour, unto the age of *Juſtinian* himſelfe.

The cauſe that moved *Juſtinian* hereto, was, that in the Digeſt hee found not every caſe decided, that falls out in common uſe of life (for how is it poſſible, when as every moment there fals out new matter, for which former lawes made no proviſion?) and therefore thought good to ſupplie that by new lawes, which he found defective in the old: ſo that the multiplication of thoſe titles grew not, that the Emperour had any meaning, to fill the world with multitude of Lawes, for hee had found the inconvenience thereof already, and therefore had repealed and aboliſhed ſo many thouſand of old Lawes as he had; but it came rather of that, that the multitude of cauſes were ſo many, that every day there fell out ſome unexpected thing that was never heard of before: beſide notwithſtanding the carefulneſſe of the Emperour himſelfe, and his great lawyer *Tribonian*, and others, whom he uſed for the ſelecting and chooſing out of the pureſt, beſt, and moſt agreeing Lawes among themſelves, out of that indigeſted heap of Lawes he then aboliſhed; yet they were not ſo quick ſighted, but in that great worke, ſundry *antinomies* or contrary Lawes paſt them, which had need to be expounded and amended, and the Authors to be recited: Further, ſundry

The reaſon which moved the Emperour to compile the Code.

of ancient Lawes were ſo ſubtilely written, th
there was more wit then profit in them; ſo that
was expedient, the Emperour ſhould explain t
ſame, & putting all ſubtility aſide, give a right ſen
unto the Law. Laſtly, whereas many things were d
livered by them briefly, and therefore obſcure
the Law-giver in his Princely wiſdome, ſet out t
ſame in other Lawes more plentifully and diſtinct
all which were the chiefeſt cauſes, why the Emp
our ſet out the booke of the Code.

The difference between the Digeſt and the Code.

The Code neither in ſtyle, nor in methode co
eth to the perfection of the Digeſt, as that wh
for the ſtyle is a barbarous Thracian phraſe La
ized, ſuch as never any mean Latiniſt ſpake; when
notwithſtanding the ſtyle of the Digeſt is very gr
and pure, and ſuch as doth not much differ fr
the eloquenteſt ſpeech that ever the *Romans* u
and for the methode, it hath no particular diſp
tion, other then ſuch as is borrowed of the Di
it ſelfe, and otherwiſe is rude and unskilfull, wh
it doth recede from the ſame: yet doth it not l
his good uſe, for to ſuch as follow the practic
the law, the knowledge of the Code is much m
expedient then the knowledge of the Digeſt is,
that the lawes of the Code doe determine mat
in daily uſe of life; which, becauſe they are a lik
all ages (for the ſame is evermore upon the ſtage,
perſons a little altered) it cannot be but the le
ning thereof muſt be very profitable and expedi
for the Common-wealth, whereas notwithſtand
the learning of the Digeſt ſtands rather in the
cuſſing of ſubtil queſtions of the Law, and enum
tio

ions of the variety of opinions of ancient Lawyers hereupon, which have more commendation of wit, then benefit toward the common-wealth in hem; but hereof hitherto.

SECT. 2.

The Argument of the firſt Booke of the Code.

THe firſt Booke of the Code treateth of Religion, and the Rites and Ceremonies thereto elonging, whereof I ſaid there was no ſpeciall ractate in the Digeſt, ſaving that it devideth the ublick right into that which concernes the Chuch, and Church-men, and the Magiſtrates of the ommon-wealth, proſecuting the later branch hereof onely, and omitting the firſt, becauſe out of hat Heatheniſh Religion, which was uſed in thoſe ncient Lawyers dayes, and thoſe ſuperſtitious ites, whereof their Bookes were full, nothing ould be taken that might ſerve for our Religion: hereupon he inſtituted a new diſcourſe thereof n the Code, beginning firſt with the bleſſed Trinie, one in eſſence, and three in perſon, wherein he ts downe a brieſe ſumme of our Chriſtian faith, greeable to the doctrine of the Prophets, and poſtles, and the foure firſt generall Counſels, the icene, Conſtantinopolitan, Epheſine, & Calcedon, rbidding any man publickly to diſpute, or ſtrive hereabout, taking occaſion upon the Neſtorian ereſie. which not long before had ſprung up, and ad mightily infected the Church, which *Juſtinian*

by this confeſſion of Faith ſo publiſhed to the whol
world, and a penall Edict joyned thereunto, hope
to repreſſe: After hee hath ſet downe a full an
ſound confeſſion of the Chriſtian faith, conformab
to the Primitive Church; next hee addeth a title
the holy Church it ſelfe, and of her priviledge
which either concerne Eccleſiaſticall mens perſo
themſelves, or their ſtate and ſubſtance, or the ac
ons one Eccleſiaſticall man had againſt an other,
with, or againſt Lay perſons: where alſo he pr
ſecuteth the degrees of Prieſts, or Miniſters, the
offices, orders, and how the ſame are to be come b
(that is, without bribes or Simony, or other worl
reſpect, ſave the worth of the perſon onely) & t
rights of holy places [Prieſts in the Law are calle
from the Latine, *Sacerdotes*, either becauſe the
office was *Deo ſacra dare*, to ſacrifice to God; or e
becauſe they were conſecrated, and as it wer
ſevered from the reſt of the people, and given up
God: they were alſo called Elders, anſwerable
the Greeke Πρεσβύτεροι either for that they we
ſo in age, * (the Law having provided, that no m
ſhould be promoted to the dignitie of a Prieſt,
hee were 35 years old) or elſe, becauſe they oug
to be ſuch in manners and carefull carriage
themſelves.] Amongſt Prieſts or Miniſters, Biſho
have the firſt place, who are, as it were,
† Overſeers and Superintendents of the reſt, ſo call
of their watchfulneſſe, care, labour, and faithfulne
in teaching the people, and doing other duti
which they owe unto the Church. [The lowe
degrees of men in the Eccleſiaſtical Hierarchy, we

* *In Authent. de ſanct. Epiſcop. § Preſbyterum, Collat. 9.*

† Ἐπίσκοποι

ie Clerkes, as the word *Clericus* is reſtrein'd to narrower acception. For in the generall, it is moſt roperly applyed to all degrees of the Clergie, and a terme contradiſtinct to the Laitie: and they are lled Clergie, from the Greeke Κλῆρος *quia de rte Domini ſunt, vel quia Dominus ſors eſt & pars ericorum*, either becauſe God is their portion and t, or becauſe they are his; as *Papias* hath obſer- ed.] To Biſhops, Prieſts, and other of that ranke, d appertain the care of Hoſpitals, whereof ſome ere for Orphans, ſome for infants, ſome for im- otent and diſeaſed perſons, ſome for poore people, me for ſtrangers, and other like miſerable perſons; d therefore together with the title of Biſhops and lerks, is joyned the title of Hoſpitals, or Almes- ouſes. In place next after the Biſhops themſelves, omes their power and audience; for albeit the iefeſt office of a Biſhop, is to inſtruct the people the doctrine of the Word, and in good example life: yet foraſmuch as all will not be obedient unto e Word, neither brought by the perſuaſion there- to good nurture, and to be kept in order, and e eminencie of the degree, wherein the Biſhops e placed, is not ſufficient to keepe the people in edience without ſome power and juriſdiction, d becauſe the Church it ſelfe is the mother and aintainer of Juſtice, therefore there is by the mperour himſelfe, and his predeceſſours, as many profeſſed Chriſtianity, certain peculiar juriſdicti- ns Eccleſiaſticall, aſſigned to the Biſhops, more orthy then the Civile, over perſons and cauſes cclesiaſticall, ſuch as touch the Soule and Con- ſcience,

ſcience, or doe appertein to any charitable or go
uſes: and over the Laitie, ſo farre forth,
either the Laitie themſelves have beene cont
to ſubmit themſelves unto their government, t
is, ſo farre as either it concernes their So
health, or the outward government of the Chu
in things decent or comely, or that it concer
poore and miſerable perſons, ſuch as widow
orphans, captives, and ſuch other like helpleſſe peo
are, or where the Civile Magiſtrate cannot be co
by, or doth voluntarily delay judgement; in
which, anciently a Biſhop was to performe dou
faith and ſanctity; firſt of an uncorrupt Judge,
then of a holy Biſhop. But in many of theſe matt
in theſe dayes, the Laitie will not ſuffer themſe
to be controll'd, and therefore hath taken a
moſt of theſe dealings from them, yea, eve
charitable cauſes. Immediately followeth a titl
Hereticks, Manichees, Samaritans, Anabapt
Apoſtataes, abuſers of the Croſſe of Chriſt, Je
and worſhippers of the hoaſt of heaven, Pagans,
of their Temples and Sacrifices; whom the Biſ
is not onely to confute by learning, but alſo to
preſſe by authoritie, for he hath not the ſpirit
Sword in vaine. The Hereticks, Jewes, and Pa
ſhall not have Chriſtian men and women to
their ſervants: that ſuch as flie to the Church
Sanctuarie, or claime the ayde thereof, ſhall no
drawne from thence, unleſſe the offence be hayn
and done of a pretenſed and purpoſed malice,
which caſe no Immunity is to be allowed them,
wicked people are to be puniſhed according to t
deſ

eſert, agreeable to the word of God it ſelfe, which ould not have his Altar to be a refuge unto the icked: And ſo farre of that part of publick right, hich appertaineth to the Prieſts, or Miniſters, and eir Function, which was omitted in the Digeſt, t proſecuted in the Code. Now it followeth, that ith like brevity I run over the three laſt Bookes of e Code, which themſelves were rather ſhadowed the Digeſt, in the title of the right of the Exche-uer, then in any juſt proportion handled.

SECT. 3.

The Argument of the 10. *Booke of the Code.*

THe firſt therefore of them ſetteth out, what is the right of the Exchequer, and in what ings it ſtandeth, as in goods excheted, becauſe here is no heire unto them, or that they are for-ited by any offence worthy death, or otherwiſe. ow ſuch as are in debt to the Exchequer, and their erties are to be ſued. Of the right of thoſe things hich the Exchequer ſels by outcry, where he that ffereth moſt, carrieth it away, and how the ſame ay be revoked, unleſſe all rights and ceremonies be lemnly performed therein. How things that are in Common betweene the Exchequer and private men, ay be ſold, and that the Exchequer evict nothing hat it hath once ſold, for that, it were a thing gainſt the dignity of the Exchequer, and would errifie private men for bargaining with it. Of thoſe hat have borrowed money out of the publick re-eipts, and what penalty they incurre, if they repay

it

it not at their dayes covenanted, ſomtimes the f
feiture of foure double of that they have borrow
ſomtimes danger of life it ſelfe. That in caſes
penalties, the Exchequer be not preferred bef
ſuch as the Offender was truly indebted unto, b
that they be firſt ſerved, and then the Exchequ
have onely that which is left. What uſurie t
Exchequer may take, that is, for money lent, a
not for ſuch ſummes as grow out of Mulcts a
Penalties. That ſuch ſentences that are given agai
the Exchequer, may be retracted within three yea
following although ordinarily all other Sentenc
are irrevocable after ten dayes; neither can be r
formed after that time, either by reſcript of t
Prince, or by pretence of new proofe. Of the goo
of ſuch as excheat, by reaſon they have made
Will, and of the goods of Incorporations, that
of ſuch as dye without heires, that they come n
to the common banke of the citie, but that th
excheat unto the Prince: Of Promoters, by wh
informations any goods are confiſcate, either
reaſon of the goods themſelves, for that they a
adulterine, or that they are prohibited to be expo
ed or imported, or upon ſome other like cauſe,
by reaſon of the perſons that have offended, a
crimes wherein they have offended; and th
puniſhment, if they give in any wrong informatio
or other then ſuch as they are bound unto by vert
of their Office: and that they give no informatio
in, but by adviſe of the Attourney of the Exchequ
and that they make no information againſt their lo
and Maſter, but in caſe of Treaſon. That it ſhall
lawf

wfull for no man to make ſute unto the Prince for
oſe things that are confiſcated unto the Exche-
er, as though it were more Honourable for the
ince to beſtow ſuch things on his Courtiers, then
keepe them to himſelfe: and therefore, ſuch as
e the Princes Secretaries, his Maſters of Requeſts,
d others that are of his remembrance, are forbid-
n to make any Acts, Inſtruments, or other writ-
gs hereof, unleſſe the Prince of his owne motion,
d at no other mans ſute, will or command the
me: Of ſuch as put themſelves into the Exchequer,
on any confeſſion made againſt themſelves: Of
ch, to whom the Prince joyntly hath given any
rme or like thing, that where one of them dyeth
ithout an heire, the other may ſucceed him; Of
reaſure found, that the Exchequer be made ac-
ainted with it; and that if it be found in a publick
ace, halfe goeth to the Exchequer, the other to
e finder: but if it be in a private place, then halfe
the Lord of the ſoyle, and the other to the finder:
f proviſion for Corne, and ſuch other like: Of
ribute, which was an ordinary payment. Of im-
ſition and ſuper-impoſitions, which were paymen-
laid upon the ſubject above ordinarie taxe, for
me preſent neceſſity, to which charges, the or-
nary taxe doth not ſuffice; which was not to be
ne, but upon great & urgent cauſe, by a Councell
lled together, & with the conſent of the ſubject:
f Collectors of the Subſidies, and in what manner
ey are to be collected & brought into the Exche-
er, & of puniſhment of thoſe that in the collection
ereof, extort more then is due: that it ſhal be lawful
diſtrain for Tribute unpaid: that ſuch acquittances

as

as the Exchequer ſhall deliver unto the accou
tants, ſhall be their full and finall diſcharge: and
Subſidie Books ſhall every quarter be ſent up i
the Exchequer with the account of the Colle&
that thereby it may appeare how much every
hath paid or oweth unto the Exchequer:
that nothing may be done for the grievance of
poore, or the favour of the rich; Of the Book
accounts of yearly gifts that commonly Subj
preſent unto the Prince at New-years-tide
otherwiſe, and that they be divided from the
counts of the Exchequer: That no man be fr
from the payment of Tribute: Of ſpending
ſuch ancient gain, and other like proviſion, as is
up in the common ſtore-houſe, and making
viſion for a new, and compelling the ſubjects,
as have plenty of ſuch grain, if it happen to
vinoed and muſtie, to buy the ſame, that the wh
loſſe thereof may not lye upon the Exchequ
What penſion ſuch Mannors as the Prince h
given or releaſed from payment of Subſidies
give, and that no man be ſo hardy to beg ſuc
matter of the Prince, leſt the revenues of the Exc
quer be thereby diminiſhed: Of Mannors that h
beene tranſlated from the payment of one kind
proviſion to an other, or that have beene in th
taxation over-rated: Of Braſſe that Minerall Co
tries are to yeeld, or money in lieu thereof,
Controllers, whoſe Office it was to caſt over ag
ſuch accounts as were brought into the Exchequ
or to examine them a-new, leſt perhaps, there mi
be an errour in them.

And ſo farre as concerning thoſe things which
e appertain to the account of the Exchequer, or
e patrimony thereof, or ſuch penſions or pay-
nts, as are due unto the ſame. Now followeth
e other part of this tenth Booke, which contain-
the burthens, duties, or offices impoſed on the
bject in the Exchequer, and what excuſe the
bject might alleage in this behalfe.

Burthens or duties, were either perſonall, as pla-
of Honour, which were not to be continued
m the Father to the Child; or they be Patrimo-
ll, which are charged upon mens inheritance, ei-
r for the good of the Common-wealth, or to
rich the Exchequer againſt dangers that are like
enſue: which are undertook and performed ei-
r by thoſe which are of neceſſity to obey that
hich is enjoyned them, or by thoſe which offer
emſelves voluntarily thereto, which ſeldome hap-
neth in patrimoniall charges: but in matters of
nour and Perſonall ſervices, it many times com-
th to paſſe, that men excuſe not themſelves from
aring of Offices, or doing of perſonall ſervices,
hough they have an immunity from them, either
the grant of the Prince, (which is to be under-
od of extraordinary ſervice only, and not of or-
nary) or by the benefit of the Law; for by the
w men are many times upon juſt cauſes excuſed
m Perſonall ſervices, ſo it be not from ſuch ſer-
ces as no man can excuſe himſelfe from: ſuch as
e Poſtings and carriages, when the Prince paſſeth
, or the Tenure of his Inheritance do ſo require
and the erecting and repairing of Bridges, Wayes

and

and Walls, the proviſion and carriage of Corne, other like kinds neceſſary for the maintenance of Princes houſe. Men are excuſed either gener from all kinds of ſervices, or particularly from ſo as all Minors, ſpecially ſuch as are Students in famous Univerſity, whileſt they give themſe there nnto their booke, are excuſed from all ſonall ſervices, but not from Patrimoniall ſervi as alſo all old men of the age of ſeventy years upward, all profeſſours of Liberall Sciences, wh by the common-wealth is benefited, all profe of Phyſick, Grammar, Oratorie, or Philoſophie they be allowed by the Magiſtrate and ſeven ski men, in the profeſſion which they make ſhew of, be not *Supernumerarii*, or above the numbe thoſe that are to be allowed, in which number neither * Poëts nor + Auditors: they are alſo cuſed, which upon juſt cauſe are diſmiſſed, e out of the Army, or out of the Schooles, either lack of health, or that they are ſo wounded, they can neither ſerve in warre any longer, nor ger indure ſtudie, which are ſo to be underſt that they yeild excuſe from Perſonall ſervices and not from Prediall.

* *Poëtæ nullâ immunitatis prærogativâ juvantur. Cod. de Profeſſorib. l. 3. lib. 10.*

But the Interpretation is more merciſull then the Text. For the Gloſſe ſaith, *Poëtæ hoc ipſo Poëtæ immunitatem non habent, non quòd eam Divini Spiritus non mer tur; ſed quod lex deficit.* + The Law hath it: *Non etiam Calcula l. 4. De Proff. & Med. lib. 10. Cod.* And *ff. de Excu: Tut. l.* Σπά Μηδὲ καλκυλάτορας (οὓς διαψηφισὰς λέγομεν) ἔχειν ἀλειτυργ λέγουσιν αἱ θείαι διατάξεις, where the Law expoundeth *Calcula* by διαψηφισὰς, that is, ſaith *Briſſon* and the Gloſſe, *Qui artem numer docent*: anſwerable to that which *Cujacius* hath noted out of the σιλικὰ. Οἱ ψηφίζειν ἡμᾶς διδάσκοντες, and then it may be tho that the Law here meaneth by *Calculatores*, thoſe that taught to ca Acic, Ciphering-Maſters.

Thoſe things that yeild excuſe in part, from Perſonall ſervices are theſe: the Renting of the Princes cuſtome, the baſeneſs of the perſons ſtate, not fit to beare any Office of credit, infamie, baniſhment, an amotion from a mans place and degree, feminine ſexe, which are to undergoe ſuch Offices onely, as are agreeable to their ſexe. Embaſſages impoſed upon any by the Prince and his Councell, which hath immunitie alſo of two years after their returne, if the Embaſſage were into places beyond the Sea, or into any farre Country, not if it were into any country neer at hand. Skill in any manuall Art or Myſteries, to the intent that they may have both time to learne their Arts and ſo become the skilfuller in the ſame, and alſo have more alacrity to teach others in their Myſterie. That care be had, that ſuch be choſen to Office, that be of the worthier ſort for their vertue and place, and the richeſt of their ſtate: that no man be choſen to Office for envie, and if any be, and the ſame be proved, he that did chooſe him thereunto is to be fined, and to pay the expenſes of the ſute, unleſſe he, which is choſen die within a ſhort time after the choiſe, then his ſucceſſors are not bound thereto. Further, men are excuſed, if being in one office, they are choſen into another, to the intent, they may the better execute and performe that office they have in hand: ſuch as are Remembrancers, which make Books of what is due to the Exchequer, and what is brought in, Auditors, receivers, Tellers, Granarers, Weighers, ſuch as weigh and try ſuch Gold, as is brought and paid into the Exchequer; Collectors,

that is, such as gather up the gold that is due in t Provinces to the Exchequer, and send the same ver into the Exchequer, who are in no case to h the same longer in their hands then the Law loweth them, much lesse to turne the same to th own use, without great offence to the Prince common wealth: the like is for a Crowne of Go that is, such gold that is put in Crowns, and offe to the Prince upon any publick gratulation, or exploite that hath been happily atchieved.

Justices of Peace, which are distributed by co tries, for the more quiet and peaceable governm of the same, whose care was to seek out the and malefactors, and to foresee that the co try people did make no mutiny, by reason of Taxes and Subsidies that were levied upon th that for gold, there might be paid silver; and ag silver for gold in the Exchequer, so that the v thereof were made equall. Usurers, although have no possessions, yet they are no lesse boun Patrimoniall or Prediall charges, then if themse had Lands and Hereditaments, although, for t infamie, they are excluded from all Personall c ges that are of credit.

SECT. 4.

The Argument of the 11. *Book of the Code.*

THe eleventh Book proceedeth in the enume tion of other vocations, that are exempts personall services of the common-wealth, be

hoſe that have been named in the tenth Book: as
laſters of ſhips and Mariners, which ſerved to bring
any Merchandiſe or proviſion for the Princes
ouſhold, out of forreine Countries into the Prin-
es ſtore-houſe; yea, although they were private
ens ſhips, which were imployed to that ſervice, ſo
at if a private mans ſhips were laden with any
blick proviſion, there could not any private bur-
en be impoſed upon him: for if the ſhip periſh by
ipwrack, by reaſon of the private burthen that is
t therein above the publick charge, then he is to
ſwer the loſſe thereof unto the Exchequer, other-
iſe then in the caſe of private men, who are them-
ves to beare the loſſe of thoſe things which are
ported or imported; neither can they make gain
private mens ſhipwrack, or of thoſe things which
e caſt out into the ſea, to eaſe the lading of the
ip, but are bound to reſtore it to the owner, under
in of confiſcation of their goods by the Tempo-
ll Law, and excommunication of their perſons by
e Eccleſiaſticall Magiſtrate. Adde to this, Myners
Metallers, aud the governours of the ſame; ga-
erars of Muskles and other like ſhell-fiſh, with
hoſe blood, either purple is made, or out of which
earles are taken: which colour Princes onely
ight uſe, as alſo Velvet and cloth of Gold; nei-
ner was it lawfull for any man (under the degree
f the Prince) to weare the ſame, ſaving only wo-
en in ſome ſort, for that ſuch ornaments are fitter
r women in ſome ſort, for that ſuch Ornaments
e fitter for women then men. Joyne to theſe Mo-
etaries, which ſerved to coyne money, Wain-men

or Carmen, which with their own cattell carryed or conveyed things, which belonged to the Prince Treasurie. The like priviledge had they which made Armour for the Princes Armorie, as Spears Breft-plates, Darts, and such like; or made Bridles Girdles studded with pearle or precious stone unto the Court, for the Kings houshold, who only were allowed to wear the same. Such as had the care and government of any Corporations, as the Princes Bakers, Vintners, Paper-sellers, Money changers, professours of Liberall Sciences, specially in *Rome*, and *Constantinople*, which after the seat of the Empire was translated thither, had all the priviledges of old *Rome*, saving the Ecclesiastick primacie, for which, notwithstanding there was long dissention between the two Cities.

* Nullius rei indiga, *as* Patricius *hath it. In the Emperours dayes it was much renouned for the study of the Law*: Digest. Proem. §. Hæc autem: unde Impp. Theodosius & Valent. AA. eam urbem Metropolitano nomine ac dignitate exornarunt, *as* Brisson *relateth.*

Next after *Rome* and *Constantinople*, * *Berith* chiefe Citie of *Syrophœnicia* had great priviledges for the famous University which was in the same and such Provinces or Countries as served the same, or any of them with yearly provision of Corne, Oyle, Beef, Mutton, Pork, and such other like victuall: which provision was to be distributed among the poor and impotent of the Cities, and not to be given to stout and valiant beggers, which are able to get their living with their own hands and therefore were to be compelled to work. The Aldermen and Governours of Cities, for that they are imployed in matters of greater services, yet none of them were to be called to any Office, before he had been even with the common-wealth, if happy any of them were in debt to it; neither were they

or any of them excuſed more then from perſonall ervices, but in prediall duties, they payd every one ccording to his rate. But as for Enterlude-players nd houſes of baudery, they had no exemption at ll, but paid double charges to the reſt. Of huſ-andmen, ſome are ſervants, as Copy-holders, o-hers are free, as Free-holders, who notwithſtan-ing themſelves are, as it were, bound unto the oyle, and are rated in the Subſidie according to heir Acres; and if they have no Land, then accor-ing to the head or number of their houſhold; hich notwithſtanding, at this day, is taken away; nd theſe, as well pay rent to the owners of the round (wherein notwithſtanding the Landlord annot exact of them, or charge them above that hich hath been covenanted between them) as ribute, and Headſilver to the Common-wealth: r the declining of which, and avoyding of neceſ-ry ſervices of the Common-wealth, as no man n put himſelfe under the patronage of any Noble an, ſo alſo they cannot be called from this ſervice the Common-wealth, to any other. Country-en, ſuch as were addicted to the ground they til-d, although the ground were their owne, yet ould they not ſell it to any man, but to him that as of the mother-village wherein himſelfe was. Mother-village was that, whence all the villages ound about were derived. Although all ſuch huſ-andmen as dwell in any village, are to pay ſubſidie r ſuch goods as they poſſeſs, or ſuch Lands as they old; yet one neighbour is not to be diſquieted or rreſted for an other mans due; for that it is a thing

unlawfull to trouble one for another, or not to
men indifferently, according to the value of t
lands, and the worth of their goods: and there
the *Romans* in rating of matters of taxes, had
Ceſſers which rated men according to that wh
they thought their ſtate to be: then had
Levellers or Surveyors, who conſidered the
ſet down, mended it, and made it even, eaſing
perſons or grounds as were over-rated, and ch
ing more deeply ſuch others as were overlig
taxed, procuring that ſuch grounds as were
and barren; ſhould be brought to tillage, and
the barren ſhould be joyned with the fruitfull,
by ſuch meanes the Prince might receive ſub
out of both: March-grounds, and ſuch as lie i
bounds of any kingdome, ſerve for the mainte
of ſuch Garriſons as are there placed for the de
of the Marches, and ſuch as hold the ſaid l
are to pay a yearly proviſion or penſion for
ſame; as alſo the Princes paſtures, woods,
forreſts, which are let out upon a certaine y
rent, either for a certain time, or in fee farm
ever, which in reſpect they pay an ordinary
ment to the Prince, either in money, or in provi
are diſcharged from all other ordinary and e
ordinary burthens. Publick things are thoſe w
appertaine to the Exchequer, or to the Ch
which may in like ſort be rented out for a ſe
or for ever, as the poſſeſſion of the Exchequer
ſo it be done to the certaine benefit of the Ch
and under ſuch ſolemnities, as in this caſe are re
red, otherwiſe it cannot be let out but for 30, y

r for thre lives. Fee-farme is, when the lands and nements, or other hereditaments, are let out for yer, under a certain yearly rent, in reacknowledge-ent of the Soveraignty thereof, belonging ſtill to e firſt Lord, whereby both the right and poſſeſ-on paſſeth to the former in fee.

SECT. 5.

The Matter of the 12. Book of the Code.

The third and laſt of theſe Books, treateth of the Honours that the Exchequer giveth; of hich the firſt and chiefeſt was the Pretorſhip, hich anciently was a great dignity, but after be-me an idle name onely, and a burthen to the Se-tors, as in which at their own charges they were ſet out playes and ſhewes, and gave unto the nperour, in conſideration of his or their glebe d, a certaine quantity of Gold called *Aurum bale*, or if they had no glebe land, then offered ey to the Emperour another piece of Gold, called *lis aurea*, both which afterward were taken a-y. Next was the Conſulſhip, which was not to ſought by ambition, or by ſcattering money a-ong the people, but by cleer ſuffrages and deſert: ter the Conſulſhip came in place the Conſtable, Maſter of the Souldiers, and thoſe which were lled *Patricii*, for that their fathers had been Se-tors, whoſe place under *Auguſtus* was equall to e Conſuls, although they were in no office and nction of the common-wealth; and the other is

not ſo much an adminiſtration as a dignity, as
Senatorſhip anciently was, into the which who
were admitted, were accounted as Parents to
Prince, and Fathers to their Country: Four
in place were the Princes Chamberlains, who
adorned with ſundry priviledges, and had the
of honour: Fiftly followed the Treaſurer, who
Maſter of all the receipts and Treaſure of the Pri
publick or private, & of all ſuch officers as were
derneath him: then the Prenotary, chief Notary
Scribe of the Court, who were called *Primicer*
[To this purpoſe note, that the Ancients for wa
thoſe more proper materials, which experience
diſcovered to our times, were wount to writ
waxen Tables, as may be obſerved out of the *J*
Lib. 1. Epiſt *Plinie* in an Epiſtle to *Tacitus*. Note alſo, that
occaſion given for inroling of their names,
bare any office or dignitie, the uſe was, to ſe
higheſt degrees *in primâ cerâ*, in the firſt pla
the Table, from hence they were called *Primic*
* *Auſten* calleth S. *Steven Primicerium Martyrum*, and the Archbiſhop of *Dole* in his Hiſtorie of *Jeruſalem* called S. *Peter Pricerium Apoſtolorum*.
therefore he that is chief of any dignity or o
may be called *Primicerius*, according to th
Phovorinus: Πεμμικήριος ὁ πρῶτος τάξεως ἢ τυχ
the firſt of any * order: hence it is, that we
in *Codin*, *Primicerios Aulæ*, *Lectorum*, *Barangor*
&c. and for this cauſe, the Law here calleth
chief Notarie *Primicerium*.] After him that
firſt Secretarie, there was an other, called *Secu*
cerius, the ſecond Secretarie, and after them, o
Clerks of the Councell, who were not all in one
gree, but ſome were firſt, ſome were ſecond, an
in order, as their perſon, place, and time
require: Over whom was the Maſter of the R

ho now is called Chancellour, and ſuch as are of
he Princes privie Councell, or Aſſeſſors of his pri-
y conciſtorie, wherein he heareth Embaſſages, and
ebateth the greateſt affaires of the State, and other
eightie matters. The Preſident or Tribune of the
chools, where young men were trained up to feats
f Armes. The Martials or Preſidents of Militarie
ffaires: the Phyſitians of the Princes body, *Con-*
antine in old time honoured with the title of
arles, as he did the reſt of his chiefe officers, but
ow they are without the dignitie of that title:
he Earles of the Countries who governed the
rovinces or Shiers whereof they were Earles:
rofeſſors of Law, and other ſciences twentie years
ogether, deſerved by the Law to be made Earles.
he Porters of the Court, and the Princes watch,
hich watched nightly for the defence of his body,
he guard or Protectors of the Princes Body, and
heir Captaine, among which were chief the Stan-
erd-bearers, as in whom the Prince repoſed moſt
ruſt, and uſed them chiefly in all matters of danger.
Next unto the Chancellour, or Maſter of the Rols,
ere the Clerks, and others that ſerved in the
olls, in which the decrees and reſcripts of the
rince, the Supplycations of the ſubject, and the
rders thereupon ſet down are recorded, laid up,
nd kept, as the Rolls of Remembrances, of Epiſtles,
ibels, Ordinances, Gifts given by the Prince, & ſuch
ke: beſides ſuch as ſerve the Prince not in matters
f learning, or warre, or the pen, or other like pla-
es above named, but in actions of the common-
wealth, and in publick offices either of peace or
warre,

warre, and their Presidents or Governours, amo
whom are Post-masters, to whom the care of
publick course doth appertain: the Treasurer
the Chamber, who hath the keeping of the pr
purse, and such things as come to the Prince
way of guist; the Master of the horse, his Que
and riders; the yeomen of the Styrop, and
Princes footmen; the * Castellians or officers
the household, which were part of the Princes fa
ly, appointed for the inward services of the Pri
in the Court, as his Tasters, Butlers, Wait
Chamberers, and such other, and their Governo
Harbingers, which upon remove provide for
Princes lodgings; all which had sundry privile
and immunities, for that they were all accounte
Souldiers, as also the eleven † Schooles for Hen
men, wherein sundry youthes, under masters appo
ted for that purpose, were trained up, som
learning, some other in Military discipline, that t
might be made fit for the service of the Prince
common-wealth, and had for their better educat
an *annuall* allowance of the Prince; and fr
thence when they were sufficiently instructed,
trayned up, were sent out to such services as t
were fit for.

* *They are called in the Title* Castrensiani. Cod. De Cast. & Minist. lib. 2. *And thee were* Pas Regiæ familiæ Servitiis & Ministeriis Principis interioribus, in aulâ & castris devota, ut Prægustatores, Principis interioribus, in aulâ & castris devota, ut Prægustatores, Pincernæ, Vestitores, Pistores, &c. Cujacius hic, & W
senbec: in Oeconom. Juris pag. 225. † *Schooles in the Code*
Corpora sive ordines officialium, hoc est, eorum qui munere &
cio aliquo quod ad Principis Ministerium pertineret, fungeban
Prat. *Concerning these, see* Panciroll, *upon the* Notitia *imperii.*
Author whereof (Marian a Scot *if it be as* Cujacius *saith*) *reckoneth more then ten Schooles, but the Emperour maketh mention of eleven*
Cod. de Locat. & Cond. l. fin.

Of ſuch as were attendants about the Prince, and were imployed in his ſervice, the chiefeſt of all where the Senators, and therefore are called in the Law, the Companions of the Prince, and have all the priviledges that Souldiers have: The Second order was of them that are Knight-riders, which either did or might ſerve in warre: in the third rank where ſuch as were in dignity. All may be compelled to ſerve in warre, which have neither juſt excuſe, nor exemption, nor have any leave of the Captaine to be abſent, unleſſe they be Merchant men, or be indebted unto the common wealth, or obnoxious to the Law, for any crime they have committed.

Under the title of Militarie diſcipline is declared, how men are to be trained up to the knowledge of warre, what oath is to be taken of ſuch as are preſt to be Souldiers, how they are to be diſtibuted into bands, what uſe or benefit the common-wealth hath by them: what is their office and how they are to be muſtered, or elſe tranſlated from one degree to an other, how they are to be judged if they offend, what priviledges belong unto them; what ſtipend or wages is due unto them; as allowance of Corn, and the baking of the ſame into bisket, which was a kind of bread twice baked for the better durance of it, and the charge thereof from place to place, as often as they hapned to remove; their livery or apparell, and the times of the delivery of the ſame, or money inſtead thereof; lodging, and proviſion of ſalted meat the longer to endure: how long Souldiers may be abſent from the Campe, and who

is

is to give them leave for abſence, and what is
puniſhment of them, that without juſt cauſe
longer abſent from the Armie, then they have le
Of young ſouldiers, and and of their training u
old ſouldiers, and of their priviledges: Provi
for keeping ſafe the Sea coſt, and ordinary h
wayes of the Countrie, that ſuch as journey
paſſe free without hurt or dammage; of runnag
out of the Army, and ſuch as conceale them,
of either of their puniſhments: of the ſons of
Officers as have dyed in the warre, and of their
ferment, if any be fit for it, that they ſucceed in
fathers office or roome: Of the Sergeant Major,
Clarke of the band, and other ſuch officers of
Campe, and of their office, reward and punn
ment: of places diſpoſed of, for publick poaſts,
carriages in in high beaten wayes, and other
wayes on neceſſity, and how the ſame & the C
are to be uſed, that is, that they be not driven
ward with ſtaves or clubs, but with whips o
and that no poſt-horſe, or carriage be taken,
for uſe of Poſt letters; to whom they are to
granted, and for what time: Of the Apparit
Sergeants, Sumners or Baylifes: Of ſundry g
officers and of their Scribes, and Regiſters, an
their tryals: Of the fees of Advocates, and o
extortion of Apparitors. And this is the ſumm
thoſe things which are ſpecially contained in
Code, beſides other things which it hath, com
with the Digeſt; the knowledge whereof at this
is not ſo neceſſary for the Civilian (who in
age hath little uſe thereof) as it is expedient
Councell

ouncellors of State, and ſuch as are called to place Court, who may thereout marke many things to re& them in their place, as the variety of thoſe ings which are herein handled doth very well ew.

CHAP. III.

SECT. I.

What the Authenticks are, and why they are ſo called.

THe third Volume of the Law is called the Authenticks, of the Greek word αὐθεντικὸν, either becauſe they have authority in themſelves, as proceeding from the Emrors owne mouth, or that they are originals to her writing, that are tranſcribed out of them.

The Authenticks therefore, are a Volume of new onſtitutions, ſet out by *Juſtinian* the Emperor, er the Code, and brought into the body of the w under one Booke.

In the Authenticks, is not that order obſerved in e diſpoſition of the Lawes, as is either in the geſt, or the Code, but as occaſion was offered of y doubt, wherein the Princes reſolution was neceſſary to every thing, ſo it is ſet downe without any her methode or forme.

The

The whole Volume is divided into 9. Collatio Conſtitutions or Sections; and they againe i 168. Novels, which alſo are diſtributed into cer Chapters.

They were called † Novels, becauſe they w new Lawes, compared to the Lawes of the Dig or the Code.

Of theſe Conſtitutions, ſome were generall, did con-cerne all, who had like cauſe of dou ſome other were private, and did concerne only place or perſons, they were writ for, which I overpaſſe with ſilence.

* In the Latine tranſlation for the Greek text acknowledgeth not this diviſion into Collations.

† *Quòd noviſſime promulgatæ ſint poſt Cod. Juſtin. Repetitæ Prælectionis*: and therefore the G calleth them νεαρὰς μὴ τὸν κώδικα: ſo likewiſe the conſtitutio the Emperours, which were newly publiſhed after the Βασιλικὰ, called the Novels of *Leo*, *Nicephorus*, *Michael*, &c.

SECT. 2.

The ſumme of the firſt Collation.

OF the generall, the firſt title and firſt Nov the firſt Collation is, that Heires, Feoff Executors, Adminiſtrators, and their Succeſſ ſhall fulfill the Will of the deceaſed, and within yeare after his deceaſe, ſhall pay his Legacie Bequeſts: and if they be once ſued for it, they forthwith pay that which is due upon the W (deducting onely a fourth part, which is due the heire by the Law *Falcidia*) or elſe, to loſe bequeſts, as themſelves have in the Will.

That it ſhall not be lawfull for a Widow, co ing to a ſecond marriage, after her firſt husba

ead, to sequester one of her children from the rest, pon whom shee will bestow such things, as her first usband gave her before marriage, but that the enefit thereof shall be common to them all: Neiher that shee convey it over to her second husband, r his children, and so defraud her first husbands hildren. And that a man in like sort surviving his ife, shall doe the like toward his first wives chilren, as concerning such Dowry as the first wife rought to her husband.

Of Suerties and Warranties, that the Creditors all first sue their Debtors, and take execution ainst their goods, and finding them not payable, all then take their remedy against the *Suerties*.

Of Monkes, that they build no Monasteries, but ith the leave of the Bishop, who is there with ayer to * lay the first stone: And that the Bishop all appoint such an Abbot over the Monkes, as in ertue and in merit excels the rest: And besides of eir habit, conversation, professions, and change f life, and who is to succeed them in their goods d inheritance.

Of Bishops and Clerks, that is, that Bishops and lerks be of good fame, of competent learning, and ge, and that they be ordeined and promoted withnt Simonie, or briberie, or the injury of the present cumbent: And that there be a set number of lerkes in every Church, lest the Church and Pashioners thereby be over-charged.

* But the Emperor maketh no mention of this Rite; for thus saith the Law: None shall presume to erect a (Church or) Monasterie, till the Bishop

f the place, beloved of God, having been made acquainted with it, all come, and lift up his hands to heaven, and consecrate the place God by prayer; πηξάμενος ἐν αὐτῷ τὸ τῆς ἡμετέρας σύμβαλον ...τερίας (φάμεν δὲ τὸ προσκυνητὸν καὶ τίμιον ὄντως σταυρὸν: and there erect

erect the Symbole of our Salvation, we meane, the venerable truly pretious Rood. *In Auth. De Monach.* § *Illud igitur. Coll.* 1. See so Novell. 123. & 131. And the like is commanded in the βασι Τὸν δ' οἰκοδομεῖν βουλόμενον Μοναστήριον προσκαλεῖν δεῖν φασ ἐπίσκοπον καὶ ποιεῖν Σταυροπήγιον: Yet that this laying the stone, hath been of ancient use in the Greek Church, may be ob ved out of their Euchologue, where it is said, that the Bishop, some other Rites performed, στὰς ἐν τῷ τόπῳ ἐν ᾧ τὸ ἅγιον γνυσθαι μέλλει θυσιαστήριον λέγει τὴν εὐχὴν καὶ μετὰ τὴν εὐ ποιεῖ ἀπόλυσιν, εἶτα λαβὼν ἕνα τῶν λίθων καὶ χαράξας δι σταυρὸν, αὐτὸς ταῖς ἰδίαις χερσὶ τίθησιν αὐτὸν ἐν τῷ θεμελίῳ, γων. Εθεμελίωσεν αὐτὴν, &c. καὶ οὕτως οἱ τεχνῖται τῆς οἰκο ἄρχονται: standing in the place where the holy Altar shall be set, a prayer, which being ended, he giveth the *Ite Missa est*, and then keth up one of the stones, and having cut a Crosse upon it; him with his own hands layeth it upon the Ground-worke, then he nounceth the Εθεμελίωσεν αὐτὴν, &c. and so the Work-men the building. That which followeth in the Euchologue, discove the forme and manner of setting up the Crucifixe, which the calleth Σταυροπήγιον: the Reader may see εἰς φυλλ ρμα. of Euchologue. The like Ceremonies are used in the Latine Chur this day, as may be seen in their *Pontificale*, page the 281. of which *Clement* the 8. set out at Rome, in the yeare 1565.

SECT. 3.

What is conteined in the second Collation.

THe second Collation treateth of the Churc State, that the lands of the Church be neit sold, aliened, nor changed away, (but u necessity, or that they be let to farme for a time upon other just cause) no not with the Prince h selfe, unlesse the change be as good, or better, that which hee receiveth from the Church: an

any man preſume contrary to this forme, to change with the Church, hee ſhall loſe both the thing he changed, and the thing he would have changed for it, and both of them ſhall remaine in the right of the Church: And that no man give or change a barren peece of ground with the Church.

That Judges and Rulers of Provinces bee made without gifts: of their office, power, authoritie, and ſtipend, and that they ſweare, they ſhall ſo ſincerely and uprightly execute their office, as knowing they ſhall give an account thereof to God and the King; which oath they ſhall undergoe before the Biſhop of the place, and the chiefe man of that Province, whither they are ſent to be Judges or Governours.

Of the Maſters of Requeſts and their office, which offer to the Prince ſuters Petitions, and report them back from the Prince unto the Judges.

Of wicked and inceſtuous Marriages, and that ſuch as marrie within thoſe degrees, forfeit all that they have unto the Exchequer, for that when they might make lawfull marriages, they rather chuſe to make unlawfull marriages.

SECT. 4.

The Argument of the third Collation.

THe third Collation conteineth matter againſt Bawdes, that they be not ſuffered in any place of the Roman Empire, that being once warned to forbeare their wicked profeſſion, if they offend therein again, they die the death therefore. If any

man let any houſe to a bawd, knowing him to be a bawd, that he ſhall forfeit * x.li. to the Prince, and his houſe ſhall be in danger to be confiſcated.

Of Maiors and Governors of Cities, that ſuch be choſen that be honeſt people, and men of credit, and that no man of the Citie being thereto choſen refuſe the ſame, and that ſuch as are thereto choſen ſhall ſweare they will proceede in every matter, according to Law and Conſcience.

That there be a certaine number of Clerkes in every Church, and that it be neither diminſhed, nor increaſed, and therefore that there be a tranſlation of thoſe that abound in one Church, into an other Church that wanteth.

The precepts which Princes gave to Rulers of Provinces, were theſe in effect, that wheras themſelves were freely choſen thereunto, they ſhould in due ſort and order goe into their Provinces, that they ſhould keepe their hands pure from bribes, that they ſhould carefully looke unto the Revenues of the Exchequer, and the peace and quiet eſtate of the Province, repreſſe outrages and rebellions, procure that cauſes be ended with all indifferencie, and ordinary charges: to foreſee, that neither themſelves nor any of their officers, or under miniſters, do injurie to the people, and ſo thoſe that ought to helpe them, ſhould hurt them: To provide that the people want not neceſſary ſuſtenance, and keep the Walls of the Citie in reparation: that they punish offences according to the Law, without reſpect of any mans priviledge, neither admit any excuſe in the examining or correcting of the ſame, ſave the

nocent

* *Sciat ſe decem librarum auri ſuſtinere pœnam, & circa ipſam periclitaturum habitationem, In Auth. De Lenonibus. § Sancimus. Coſl.* 3.

nocencie onely: that they keepe their Officers in order: that they admit to their Counſell ſuch as are good men, & are milde towards ſuch as are good, and ſharpe towards ſuch as are evill: that they afford not Protections to every man, neither to any one longer then it is fit and convenient it ſhould be: that where they remove, they vexe not the Country-men with more carriages then is needfull: that they ſuffer not Churches, and other like holy places, to be a Sanctuarie to murtherers, and other ſuch like wicked men: that they ſuffer not Lands to be ſold without fine made to the Exchequer: that they regard not Letters or reſcripts, contrary to Law, and againſt the weale publick, unleſſe they be ſeconded: that they ſuffer not the Province to be diſquieted under pretence of Religion, hereſi, or ſchiſme, but if there be any Canonicall or ordinary thing to be done, they adviſe thereabout with the Biſhop: that they doe not confiſcate the goods of ſuch as are condemned: that they patronize no man unjuſtly: that no man ſet his Armes or Cogniſance upon an other mans Lands. neither that any carrie any weapon, unleſſe he be a Souldier.

what is an hereditary portion, and how children are to ſucceed: of ſuch as deny their owne hand-writing, and * how they are to be puniſhed, as well in perſonall as in reall actions: and that ſuch deniers after their deniall be not admitted to other exceptions: and the taking away the thing in controverſie from him, which denied the true owner to be Lord thereof.

* *Auxiliabuntur autem tibi ab hoc etiam Deo amabiles Eccleſiarum defenſores De Maud Princip. § Neque autem homicid.*

* *Condemnationem adverſus eum duplicem in utroque caſu fieri ſancimus. De Trient. & ſemiſſ. § Studium vero.*

SECT. 5.

What is comprehended in the fourth Collation.

THe fourth Collation handleth matters of Ma riage, and that marriage is made onely by co ſent without either lying together, or inſtrument dowrie: Of women that marrie againe within t yeare of Mourning, which by Law in ſundry ſo were puniſhed, for confuſion of their iſſue: th there be an equall proportion in the Dowrie, a the Joynture: Of divorce and ſeparation of mar ages and for what cauſes, by conſent, for impote cie, for adultrie: and that Noble women which ter the death of their firſt husband, being No perſonages, marrie to inferiour men, ſhall looſe t dignitie of their firſt husband, and follow the co dition of their ſecond husband.

Of Appeales, and within what time a man m appeale and from whom, and to whom the appe is to be made.

† *Nihil amplius quam ſiliquam unam pro ſingulo ſolido annuam præſtare. Ne quis quod Agricol. §. Sancimus*

That none which lends money to a husban man, take his land to morgage, and † how mu uſury-money a man may take of a husban man.

Of her that was brought to bed the eleven moneth after her husbands deceaſe, and that ſu as are borne in the beginning of the ſame mon are to be acccounted for legitimate, but ſuch

re * borne in the end thereof, are to be holden or baſtards.

Of inſtruments and their credit, and that in every inſtrument there be Protocols left, that is ſignes nd notes of the time when ſuch a contract was ade, and who was notarie and wineſſes to the me, and that after it be written faire, and engroſſed a lidger or faire † *mundum* Book.

* The Gloſs relateth a matter of fact contrary to this Law: A widdow in Paris that was elivered of a child the 14. moneth after her husbands deceaſe, never-eleſs, the good repute which was generally conceived of this wo-ans continencie, prevailed ſo much againſt the letter of the Law, at the reverend Judges awarded the cauſes of child-birth to be ex-ordinarie, the woman to be chaſt and the child legitimate: *Hæc men in exemplum trahi facile non oportet*, as the Gloſs there con-ndeth.

† χάρτην καθαρὰν: *Chartam puram.*

SECT. 6.

What is compriſed in the fifth Collation.

The fifth Collation forbiddeth the alienation or . ſelling away the immoveable poſſeſſions of the hurch, unleſſe it be done under certaine ſolemni-s, and then onely when the moveable goods are t ſufficient to pay the debts of the Church or ly place.

Further, it provideth that the name of the Prince r the time being, be put in all inſtruments, and the y and yeare when the inſtrument was made.

That the Oath of the deceaſed, as concerning e quantitie of his goods, ſo farre as it toucheth e deviſion of the ſame among his children, be

holden for good, but that it be in no ſort preju
ciall to the creditors.

Of women tumblers, and ſuch other of like ſo
which with the feats of their body, maintaine the
ſelves, that no oath or ſuretie be taken of the
that will not leave that kind of life, ſince ſuch oath
againſt good manners, and is of no value in La

That ſuch gifts as are given by private men
their Prince need no record, but are good with
enroling of them; and in like ſort ſuch things as
given by the Princes to private men.

That no perſon, thing, or Gold of an other man
areſted for an other mans debt, which now they
reprifals, and that he which is hurt by ſuch re
ſals, ſhall recover the foure double of the dam
that he hath ſuffered thereby, and that one man
not beaten or ſtriken for another.

That he that calls a man into law out of his T
ritorie, or province where he dwelleth, ſhall e
caution if he obtaine not in the ſute againſt him,
ſhall pay him ſo much as the Judge of the Court
condemn him in. And that he who hath given
oath in Judgement, ſhall pay the whole coſts of
ſute, but after ſhal be admitted to proſecute the ſa
if he will, ſo that he put in ſureties to perform

That ſuch women as are unindowed ſhall h
the fourth part of their husbands ſubſtance, a
his death, and in like ſort the man in the woma
if the man or woman that ſurviveth be poore.

That Churches or Religious perſons may cha
grounds one with an other: for that one privile
ed perſons right ceaſeth againſt another, that i
like ſort priviledged.

That ſuch changes of Mannors, Lands, Tenements, and Hereditaments, as are made by Churchmen to the Prince, be not ſained matters, and ſo by the Prince come to other mens hands, who have ſet on the Prince to make this change, and that the change be made to the Princes houſe onely, and if the Prince, after convey or confer the ſame upon any private man, it ſhall be lawfull for the Church to reenter upon the ſame again, and to repoſſeſſe it as in her former right.

That in greater Churches, Clerks may pay ſomething for their firſt admittance, but in leſſer Churches it is not lawfull.

That ſuch as build, found, or endow Churches (which muſt goe before the reſt) do the ſame by the authority of the Biſhop; and that ſuch as are called Patrons, may preſent their Clerks unto the Biſhop, but they cannot make or ordaine Clerks therein themſelves.

That the ſacred myſteries or miniſteries be not done in private houſes, but be celebrated in publick places, leſt thereby things be done contrary to the Catholick and Apoſtolick faith; unleſs they call to the celebrating of the ſame, ſuch Clerks of whoſe faith and conformitie there is no doubt made, or thoſe who are deputed thereunto by the good will of the Biſhop. But places to pray in, every man may have in his own houſe; if any thing be done to the contrary, the houſe wherin theſe things are done, ſhall be confiſcated, and themſelves ſhall be puniſhed at the diſcretion of the Prince.

That neither ſuch as be dead, nor the Corſe or

Funerall of them be injured by the creditors, b
that they be buried in peace.

That womens Joyntures be not ſold or m
away, no not even with their own conſent.

In what place, number, forme, manner, and o
der the Princes Councell is to ſit, and come to
ther.

That he that is convented in judgement, if
willfully abſent himſelfe, may be condemned af
iſſue is joyned.

That no man build a Chappell or Oratorie in
houſe, without the leave of the Biſhop, and befo
he conſecrate the place by prayer, and ſet up
Croſſe there, and make Proceſſion in the place; a
that before he build it, he allot out lands neceſſa
for the maintenance of the ſame, and thoſe that ſh
attend on Gods ſervice in the place: and that
ſhops be not non-reſidents in their Churches.

That all obey the Princes Judges, whether
cauſe be Civill or Criminall they Judge in; a
that the cauſes be examined before them witho
reſpect of perſons, and in what ſort the Proce
to be framed againſt ſuch as be preſent, and how
gainſt thoſe that be abſent.

SECT. 7.

What is the matter of the ſixth Collation.

THe ſixth Collation ſheweth, by what mean
children illegitimate, that is, either by th
Princes diſpenſation, or by the fathers Teſtamen
of

by making inſtruments of marriage between the other and Father of Children, ſo that the Mother e not before the perfecting of them, or that ſhe ve riotouſly with other men, and ſo make herſelf nworthy to be a wife.

That Noble perſonages marrie not without in-ruments of dowrie and ſuch other ſolemnities as e uſuall in this behalfe, that is, that they profeſs e ſame before the Biſhop or miniſter of the place, d three or four witneſſes at the leaſt, and that a menbrance thereof be left in writing, and kept ith the Monuments of the Church; but that it all not be needfull for meaner perſons to obſerve e former ſolemnities.

That ſuch as were indebted to the Teſtator, or ey to whom the Teſtator was indebted, be not ft Tutors or Guardians to their children; that if ny ſuch be appointed a Tutor, a Curator be joy-ed to him, to have an overſight of his dealing: at Tutors or Curators are not bound by law to t out the Minors money, but if they doe, the in-reſt ſhall be the Minors; and the Tutor ſhall have very yeare two moneths to find out ſufficient men, whom he may let the money out to hyer, for that is let out at his perill: that if the Minors ſtate be reat that there will be a yearly profit above his nding, the Tutor ſhall lay up the reſidue for a ſtock gainſt he comes to age, or buy land therewith, if he an finde out a good bargain, and a ſure title: but if he childes portion be ſmall, ſo that it will not finde im, then the Tutor or Curator ſhall diſpoſe of the Minors ſtate, as he would diſpoſe of his owne, to which alſo he is bound by oath.

How

How ſuch inſtruments as are inrolled be Judges, concerning matters of borowing and le ing and ſuch like may have credit: how men ſafely bargain either with writing, or without ting if themſelves be ignorant men; and of the co paſſon of Letters, and what credit there is to be ven to an inſtrument, when the writings and neſſes do varie among themſelves.

Of uuchaſt People and ſuch as riot againſt na whoſe puniſhment is death.

Of ſuch as diſpitefully on every light trifle, ſw by God, and * blaſpheme his holy name, ag whom alſo is provided the ſentence of death.

That the Juſtices of Peace or other Officers that purpoſe appointed, ſpeedily diſpatch the b neſſe of thoſe which are of their Juriſdiction: ſuch as come as ſtrangers and forreiners ou other countries, having no juſt cauſe of their co ming, be ſent back again with their ſubſtance, ſuch places as they came from; but if they be vagabonds and rogues, or other like valiant begg they either drive them out of the place, or co pell them to labour: yet evermore having regard provide for ſuch as are honeſt, poore, old, ſick impotent.

* The crime of Blaſphemy was ſo odious to the Emperour, that he thought God would never ſuffer a blaſphemer to go unpuniſhed; and for ſins of this nature ſaith he, the world is viſited with famines, plagues and peſtilences: therefore the L here provideth that a blaſphemer ſhall undergoe *ultimum ſuppici* If thou meeteſt (ſaith *Chryſoſtome*) a man blaſpheming ῥάπισον ἀ τὸ ὄψον, σύντριψον αὐτοῦ τὸ στόμα, ἁγίασόν σου τὴν χεῖρα διὰ πληγῆς: Strike him a box on the eare, give him a daſh in the mo and ſanctifie thy hand with a blow. Ανδριάντων. α. *ſive Hom.* 1. *Pop. Antiochenum. pag.* 460. *edit. Savil.*

Th

That Clerks be firſt convented before their Ordinarie, and that the Ordinarie doe ſpeedily end the matter, that they may not be long abſent from their benefices: and that they be not drawne before temporall Judges, unleſſe the nature of the cauſe do ſo require it, as that it be a meere civile cauſe, or a criminall cauſe, belonging wholy to the temporall court; wherein if a Clerk ſhall be found guiltie, he ſhall firſt be deprived from his miniſtrie, and then ſhall be delivered over into the Secular hands: but if the crime be ſolely Eccleſiaſticall, the Biſhop alone ſhall take knowledge thereof, and puniſh it according as the Canons require.

That where one dieth without iſſue leaving behind him brethren of the whole blood, and brethren of the halfe blood; the brethren of the whole blood have the preheminence in the lands and goods of the deceaſed, before the brethren of the halfe blood, whether they be of the fathers ſide, or the mothers ſide.

That no man make Armour, or ſell it, without the Princes leave, unleſſe they be knives or other ſuch like ſmall weapons.

SECT. 8.

What is the matter of the ſeventh Collation.

THat proof by witneſſes was deviſed to that end that the truth ſhould not be concealed; and yet all are not fit to be witneſſes, but ſuch alone as are of honeſt name and fame, and are without

out all ſuſpicion of love, hatred, or corruptio
and that their diſpoſitions be put in writing, t
after the witneſſe, be publiſhed, and their diſp
tions be known, there be no more productio
witneſſes, unleſſe the partie ſwere thoſe pro
came a new unto his knowledge.

If Parents give profuſely to one of their child
the other notwithſtanding, ſhall have their la
portions, unleſs they be proved unkinde tow
their parents.

That women albeit they be debtors and cr
tors, may be Tutors or Curators to their child
and that there is not an oath to be exacted of t
that they will not marry againe, ſo that they
nounce their priviledge granted unto them *per*
natûs conſultum Velleian: and performe all ot
things, as other Tutors do.

That Governours of Provinces are not to le
their charges, before they are called from the
by the prince, otherwiſe they incurre the dan
of Treaſon.

That womens dowries have a priviledge be
all other kinds of debt; that what dowrie a wo
had in her firſt marriage, ſhe ſhall have the ſame
her ſecond marriage, neither ſhall it be lawfull
her Father to diminiſh it, if it returne againe i
his hand.

That a man ſhall not have the property of
wives dowrie, neither a woman the propertie
that which is given her before marriage, but t
property of either of them ſhall come unto th
children, yea though they marry not againe.

SECT

SECT. 9.

What is compriſed in the eighth Collation.

Wills or Teſtaments made in the behoof of children, ſtand good, however imperfect otherwiſe they are, but they are not available for ſtrangers, (but ſtrangers are they which are not children) neither mattereth it whether the Will or teſtament be writ by the Fathers hand only, or by ſome other body by his appointment; and as the father divideth the goods among the children, ſo they are to have their parts. *De Teſtament. imperfect. § Nos igitur.*

Of Hereticks, and that ſuch are Hereticks, which do refuſe to receive the Communion at the Miniſters hand, in the Catholick Church: That Hereticks are not to be admitted to roomes and places of honour, and that women Hereticks may not have ſuch priviledges as other women have in their dowries.

That is called mariners uſurie, that is wont to be ſent to Mariners, or Merchant-men, eſpecially ſuch as trade by ſea; which kind of lending, the Law calleth paſſage-money, in which kind of uſurie, a man cannot go beyond the 100. part.

That Churches enjoy a hundred yards preſcription.

That ſuch things that are litigious, during the controverſie, are not to be ſold away. A litigious thing, is that which is in ſute between the plaintife and defendant.

That

That while the ſute dependeth, there be no ters or Edict procured from the Prince concer the cauſe in queſtion, but that the cauſe be dec according to the generall Lawes in uſe.

That in divorces, the children be brought with the innocent party, but at the charges o nocent: and that divorces be not admitted, but upon cauſes in Law expreſſed.

That no woman whoſe husband is in warfa otherwiſe abſent, ſhall marrie again, before ſhe certaine intelligence of the death of her fo husband either from the Captaine under who ſerved, or from the Governour of the place w he dyed; if any woman marry againe without certaine intelligence, how long ſo ever othe her husband be abſent from her, both ſhe an who marryed her ſhall be puniſhed as adulte and if her former husband after ſuch marriage, turne back againe, ſhe ſhall returne againe to former husband, if he will receive her, othe ſhe ſhall live apart from them both.

**De hæred: ab inteſtat. ſi quis autem.* If any man beat his wife for any other cauſe, for which he may be juſtly ſevered or divo from her, he ſhall for ſuch injurie be puniſhed.

If any man conceive a jealouſie againſt his as that ſhe uſeth any other man more famili then is meet ſhe ſhould, let him three ſeverall ti admoniſh him thereof, before there honeſt and ſ ſtantiall men; and if after ſuch admonition h found to commune with her, let him be accuſed adultry before ſuch a Judge, who hath authority correct ſuch offences.

SEC

SECT. 10.

What is the matter of the ninth Collation.

The ninth and laſt Collation conteineth matter of ſucceſſion in goods, that as long as ere be any Deſcendent, either Male or Female, long neither any Aſcendent, or any Colerall can ſucceed, and that if there be no Deſcennt, then the Aſcendent be preferred before the llateral, unles they be brethren or ſiſters of the hole blood, who are to ſucceed together with Aſcendent; but in Aſcendents, thoſe are firſt led which are in the next degree to the deceaa, then after thoſe which are in a more remote gree: that in Collaterals all be equally admitted, hich are in the ſame degree, and of the ſame Pants, whether they be male or female.

That the lands of any Church, Hoſpitall, or her like Religious place, be not ſold, aliened, or anged, unleſſe it be to the Princes houſe, or to, with an other like Religious place, and that in uall goodneſſe and quantitie, or that it be for the demption of Priſoners: and that they be not let t to any private man more then for 30. years, or lives, unleſſe either the houſes be ſo ruinated, that ey cannot be repaired without great charges of e Church, or other religious houſes, or that be overcharged with any debt or duties belonng to the Exchequer, and thereby there cometh ſmall revenue to the Church, or Religious

place

place thereout ; in every of which cases it is l
full to let out the same for ever , reserving a y
ly competent rent , and other acknowledgeme
other soveraignty therein.

That the holy vessels of the Church be not
away , unlesse it be for the ransoming of Priso
or that the Church be in debt , in which cas
they have more holy vessels then are necessary
the service of the Church,they may sell those w
are superfluous to any other Church that nee
them,or otherwise dispose of them at their ple
for the benefit of the Church , or other holy
whose they are.

Where Usurie in processe of time doth do
the principall , there Usurie for the time to c
doth cease , and those particular payments w
afterwards doe follow are reckoned in the pri
pall.

What kinde of men are to be chosen Bishops,
as are found in faith , of honest life and conv
tion, and are learned, that such as chuse them, s
before the choyce , they shall neither chuse an
any reward, promise , friendship , or any other
fter cause whatsoever , but for his worthinesse
good parts onely.

That none be ordeined by Symonie , and if th
be, that both the giver, taker , and mediator th
of be punished according to the Ecclesiasti
Lawes , and they all made unworthy to hold or
joy any Ecclesiasticall living hereafter.

That if any at the time of any Bishops elect
object any thing against him that is to be elect

he election be ſtaid, till proofe be made of that which is objected by the adverſarie againſt the parſie elected, ſo that he prove the ſame within three Moneths; and if any proceeding be to the conſeration of the ſame Biſhop in the mean time, it is oid.

That the Biſhop after he is ordeined, may without any danger of Law, give or conſecrate his oods to the uſe of the Church, where he is made iſhop, and that he may give ſuch fees as are due to he electors by law or cnſtome.

That Clerks be not compelled to undergoe peronall functions, and ſervices of the commonealth, and that the buſie not themſelves in ſecular ffaires, and ſo thereby be drawn from their ſpiriall function.

That Biſhops for no matter or cauſe be drawne efore a temporall Judge, without the Kings ſpeall commandement, and if any Judge preſume to ll any without ſuch ſpeciall warrant, the ſame is o loſe his office, and to be baniſhed therefore.

That no Biſhop abſent himſelf from his Dioces ithout urgent occaſion, or that he be ſent for by he Prince, and if any doe abſent himſelf above he year, that he ſhall lack the profit of his Biſhopick, and be depoſed from the ſame, if he returne ot again within a competent time appointed for he ſame.

What manner of men are to be made Clerks, ſuch s are learned, and are of good Religion, of honeſt fe and converſation, and are free from ſuſpition of incontinencie: that no Miniſter be leſs then 35. years

of age, and that no Deacon or Subdeacon under 25. that all Clerks and Miniſters be ordeine freely.

If any build a Church, and indow the ſame, th he may preſent a Clerk thereto, ſo that he be wo thy to be admitted thereto: but if he preſent an u worthy man, then it apperteineth to the Biſhop place a worthy man therein.

If any Clerke be convicted to have ſworne fal ly, hee is to be deprived of his office, and further be puniſhed at the diſcretion of the Biſhop.

That Clerks be convented before their own ſhops, & if the parties litigant ſtand to the Biſh order, the Civile Judge ſhall put it in execution: b if they agree not upon the judgement, then the C vile Judge is to examine it, and either to confir or infirme the Biſhops order, and if he confirme then the order to ſtand, and if not, then the pa grieved to appeal.

If the cauſe be criminall, and the Biſhop finde party guilty, then the Biſhop is to degrade h and after to give him over to the ſecular pow the like courſe is to be held if the cauſe be firſt e mined before the temporall Judge, and the p found guilty, for then hee ſhall be ſent to the Bi to be deprived, and after again ſhall be delive to the ſecular powers to be puniſhed.

That Biſhops be convented before their Met politans.

Si vero etiam Litaniam concuſſerit

That ſuch as in Service time do abuſe, or in the Biſhop, or any Cleark in the Church, being divine ſervice, be whipt, and ſent into baniſhm

But if they trouble thereby the divine Service it ſelf, they are to dye the death for the ſame. *capitale periculum ſuſtinebit. De Sanctiſſim. Epiſcop. & Deo. § Si quis cum ſacro miniſt.*

That Lay men are not to ſay or celebrate divine Service, without the preſence of the Miniſter, and other Clerkes thereto required.

That ſuch as goe to Law, ſwear in the beginning of the ſuit, that they have neither promiſed, or will give ought to the Judge, and that uſuall fees be taken by the Advocates Counſellours, Proctors, or Attournies, and if any man take more then his ordinary fees, he ſhall be put from his place of practiſe, and forfeit the four double of that he hath taken.

That the 4. generall Councels be holden as a Law, and that which is decreed in them.

That the Biſhop of Rome hath the firſt place of ſitting in all aſſemblies, and then the Biſhop of Conſtantinople.

That all Clergy mens poſſeſſions be diſcharged from all ordinary and extraordinary payments, ſaving from the repairing of Bridges and High wayes, where the ſaid poſſeſſions doe lye.

That no man build a Church, or holy place, without the leave of the Biſhop, and before the Biſhop there ſay Service and, ſet up the ſigne of the Croſſe.

That no man in his owne houſe ſuffer Service to be ſaid, but by a Miniſter allowed by the Biſhop, under pain of confiſcating of the houſe, if it be the Lord of the houſe that preſumeth to doe it, or baniſhment, if it be done by the tenant.

If any bequeath any thing to God, it is to be payed to the Church where the Teſtator dwelled.

If any deviſe by his laſt Will a Chappell, or Ho
ſpitall to be made, the Biſhop is to compell the Ex
cutors to performe it within five years after the de
ceaſe of the Teſtator; and if the Teſtator name a
governour, or poor thereto, they are to be admi
ted, unleſſe the Biſhop ſhall finde them unfit f
the roome.

That the Biſhop ſee ſuch Legacies performed,
either are given for the redemption of priſoners,
for other godly uſes.

That Maſters of Hoſpitals make an account
their charge, in ſuch ſort as Tutors doe.

That ſuch as luſt againſt nature, and ſo beco
brutiſh, receive condigne puniſhment worthy th
wickedneſſe.

That ſuch as make Eunuches, themſelves
made Eunuches, and if they eſcape alive, th
goods to be forefeited to the Exchequer, and the
ſelves be impriſoned all the dayes of their life.

Such as by force ſteal away women; themſel
and ſuch as are their abbetters and helpers, are
dye therefore, and that it ſhall not be lawfull f
her that is carried away, to marry to him t
doeth carrie her away: and that if her father do g
his conſent to ſuch marrige, he is to be baniſh
but if ſhe marry him without her fathers conſe
then is ſhee not to take benefit by her fathers W
or any other thing that is her fathers.

Theſe, & ſundry other matters of great importan
and neceſſary for the well governing of a co
mon-wealth, are conteined in the Authenti
which I paſſe over with drie foot, not becauſe t

re not neceſſary to be known, but becauſe I would ot cloy the Reader even with thoſe things which re good.

All theſe workes are the labour of *Juſtinian*, as ther gathered together by him out of the an- ent Lawyers books, and ſuch Emperours decrees, went before him, or elſe were decreed and ordei- d by himſelfe, as matter and occaſion offered it lfe, and the yovngeſt of them is neere eleven hun- red yeares of age, that is, within 500. yeares after hriſt, or not much otherwiſe.

CHAP. IV.

SECT. 1.

That the laſt Tome of the Civile Law is the Feudes, and what they are.

THe laſt Tome of the Civile Law is the Feudes, that is, the Books of Cuſtomes and Service, that the jubject or vaſſall doth to his Prince, or Lord, for ſuch lands or fees he holdeth of him.

This peece of the Law, although it was not much uſe in the old Emperours dayes, yet *Juſtinian* mſelf ſeemeth to acknowledge them in his Novell con-

constitutions, calling them παλαιας and those whi
are more carefull to seek out the beginning of the
bring them, some from the ancient Clienteles or r
tinews the ancient Romans beforeChrists time h
as *Budeus* doth; some other from *Alexander Se*
rus time, who, as *Lampridius* in the life of *Al*
ander, saith, gave such lands as he wonne o
of the Enemies hands to his lords Marchers, a
his Souldiers, that they should be theirs, and th
heires for ever, so they would be Souldi
neither should they come at any time to the ha
of any private man, saying, they would more
stily serve, if they fought for their owne l
which opinion commeth next to the anci
border-grounds of the Romans, when
there is a title in the eleventh Book of Code,
fundis Limitrophis, that is of Border-ground:
thers referre it over to *Constantines* time the gr
who enacted for the benefit of his Souldiers, t
such Lordships and lands as before time they
their wages out of, should pass over unto their he
and be appointed to their familie, and stock, so t
they found and mainteined continually a certa
number of Souldiers.

See for the originall of the Feuds *Cujacius*, but especially Sir *Henry Spelmans* Glossarie.

From whence soever it descended, this is cert
that it came very late to be a particular volum
the law it sefe: The compilers or gatheres toge
thereof, were *Obertus de Horto*, and *Ciraldus C*
pagist, two Senators of Milaine, who partly ou
the Civile Law, and partly out of the Custome
Millaine drew the same, but without forme
order.

Th

The word it ſelfe is a barbarous word, but had
s originall; notwithſtanding, as *Iſidore* ſaith, from
he word *Fœdus*, being a good Latin word, and ſo
to be interpreted *tanquam feodum*, that is, as a
ning covenanted between two: Others deduce it
om the word *Fides*, as it were in Latine *Fideum*,
nd by a more pleaſant pronunciation *Feudum*;
hereupon ſuch as are Feudataries to other, are
alled in Latin *Fideles*, becauſe they owe faith and
eageance to ſuch whoſe Feudataries they are, who
the *Lombard* tongue are called Vaſſals. Beſides,
ealtie, which ſome call *Hominium*, by the Feudiſts
termed Homage: for the nature of a feude is this,
at it draweth with it faith and homage: ſo that
ch as are Feudataries, or fee-men, profeſs them-
lves to owe faith to ſuch, to whom they are in fee,
d that they are his men; inſomuch, as when a
e-man dieth, his heire doth make faith, and doth
s homage to the Lord, as is well ſeen both in the
ords Spirituall and Temporall of this land,
ho both in their creation, and alſo in their
ceſſion one after another ſweare an oath, and
o their homage to their Soveraigne, and do
y other duties which are Symbols and ſignes
their ſubjection to their Soveraigne: And for
hers that are under the degree of Barons, and
t are fee-men unto the King, and ſo do not ma-
ell obedience unto his Majeſtie, they pay yearely
mething in reſpect of their homage, according
the quantitie or qualitie of the fee or tenure
ey hold of the Prince.

A Feude, in Engliſh may be called a Ten
which cauſed *Littleton*, when he treated of Feud
ſo far forth as they are here in uſe in England (
as are all thoſe which are called in Latin *Feuda*
litaria, and Feuda ſcutiferorum, called by *Juſtin*
δυρεόφοροι, which are by the Lawes of the l
tearmed by the names of Knights-ſervives,
Eſcuage) to call them by the names of Tentures.

A Feude is a grant of lands, honours, or
made either to a man at the will of the Lord,
Soveraigne, or for the Feudataries own life, o
him, or his heires for ever, under condition,
he and his heires in caſe where the Feude is pe
tuall, do acknowledge the giver and his heire
be their Lord and Soveraigne, and ſhall beare f
and alleageance unto him and his, for the ſaid
nure, and ſhall do ſuch ſervice to him,& his for
ſame, as is between them covenanted, or is pro
to the nature of a Feude.

SECT. 2.

That Feuds are either Temporall or Perpetuall and how.

OF Feudes, ſome are Temporall, ſome ot
are Perpetuall.

Temporall Feuds are thoſe that are given, eit
for terme of a mans life, or for years, or at the
of the Lord, for ſome ſervice done, or to be do
ſuch as are Annuities given to Lawyers for coun

Pentio

entions given to Phisitians for their advice, Stipends to any Teacher of Arts and Sciences, Fees or keeping of Towres & Castles; called by Feudists *Castalia*, and is by *Littleton* called Castle ward, although by him it is taken for a state of inheritance.

Perpetuall Feuds, are rights which a man hath by grant from the Soveraigne, or chief Lord of the Coyle or territorie, to have, hold, use, occupie, and enjoy honours, mannors, lands, tenements, or hereditaments, to him and his heires for ever, upon condition that the said vassall or partie, his heires and successors, do homage and fealty to his Lord, his heires and successors, for such honours, lands or hereditaments, and do him either service in warr, according as it is covenanted between the Lord and his vassall, or such other service as the nature of his tenure doth require, or if he faile therein, he shall either finde some other in his roome to doe the same, or else pay a certaine summe of money in lew thereof.

Although this Tenure by the first creation thereof be perpetuall, yet that the soveraignty thereof should not still remain unprofitable to the first Lord, the whole benefit thereof going continually to the vassall or tenant; it is provided, that the Soveraigne or chief Lord the first yeare, the heire or successour of the vassall comes unto his land, shall have the whole revenue of his livelihood for that yeare, or a certaine summe of money in token of the returne thereof unto the Lord, and the redemption thereof made againe by the tenant, which by the law of the Novels is called εἰσδεκτικὸν, and is well nigh the same

ſame that we call livery, which every heire th holdeth in Knights ſervice, ſueth out before take poſſeſſion of his land, as heire to his An ſtours.

This Tenure is gotten either by Inveſtiture, or Succeſſion.

Inveſtiture what it is.

Inveſtiture is the ſame that we call creation, is the Primier grant of a Feude, or Tenur any, with all rights and ſolemnities thereunto longing, wherein the homager, or feodatarie the moſt part upon his knees promiſeth faith alleageance under ſolemne oath unto his Lord his ſucceſſours.

What is Succeſſion in the Feuds.

Succeſſion is, whereby the eldeſt ſonne ſucceed the father in his inheritance, and if he faile have no iſſue, then the next brother and ſo in or ſucceſſively; and if there be no ſonne, then the heire male, and if there be no heire male, then land eſcheats unto the Lord. For the *Lumba* from whom the Feuds firſt came, or at the were chiefly derived from them, directing all th policie as the *Lacedemons* did to matters of wa had no feminine Feuds among them, but after proceſſe of time, there were created as well Fe nine Feudes as Maſculine Feudes, in ſo much where there was no iſſue male to put them from women did ſucceed in the inheritance.

SECT

SECT. 3.

Of Feudes Regall and not Regall, Leige and not Leige, and how Feuds may be loſt.

OF Feuds, ſome Regall, ſome not Regall: Regall are thoſe which are given by the Prince onely, and cannot be given by any inferiour.

Of theſe, ſome are Eccleſiaſticall, as Archbiopricks, Biſhopricks and ſuch like: others are Civill or Temporall, as Dukedomes, Earledomes, Vicounts, and Lords, who by that are diſtinguiſhed from the reſt of the people, that they have the conducting of the Princes Armie at home and abroad, if they be thereto appointed, and have right as Peers in makingof Lawes, in matters of tryall, and ſuch other like buſineſſes.

Not Regall are thoſe which hold not immediatly of the Prince, but are holden of ſuch Eccleſiaſticall or Civill States which have had their Honors immediately from the Prince.

Beſides of Feuds, ſome are Leige, others not Leige; Leige Feuds, are they in the which the Vaſſall or feodatorie promiſeth abſolute fealtile or faith to his Lord, againſt all men without exception of the King himſelfe, or any other more auncient Lord to whom beſides he oweth alleagance or ſervice. Of this ſort there is none in this Realme of England, but ſuch as are made to the King himſelf, as appeareth by *Littleton* in the title of Homage, wherein

Salve le Foy que je doy à noſtre Signour le Roy. Littleton. tit. Homage.

wherein is ſpecially excepted the faith which t
Homager oweth to his Lord the King.

Feuds not Leige, are ſuch wherein Homage
done with ſpeciall reſervation of his faith and
leageance to his Prince and Soveraigne.

Of ſuch as are Vaſſals or Leige men, ſome
called *Valvaſores majores*; others *Valvaſores mino*
Vavaſors. *Valvaſores majores* are ſuch as hold great places
the ſtate under the Emperour or King, (as the
grees before-named, and are called Peers of
Land) who onely gives Nobilitie. *Valvaſores mi*
res, are thoſe which are no Peeres of the L
and yet have a preheminence above the people,
are as it were in a middle Region between
people and the Nobilittie, ſuch as are Knig
Squires, and Gentlemen.

The Feuds are loſt by ſundry wayes, by def
of iſſue of him to whom it was firſt given, wh
they call *Apertura feodi*; by ſurrender ther
which by them is termed *Refutatio feodi*; by
feitere, and that was in two ſorts, either by
doing the ſervice that his tenure did require, or
committing ſome villainous act againſt his Lord,
in conſpiring his Soveraignes death, defiling his b
or deflowring his daughter, or ſome other
act treacherous to his Lord, and unworthy
himſelfe.

CHA

CHAP. V.

SECT. 1.

What the Canon Law is in generall: What the Decrees are, and of how many parts.

AND ſo much of the Civile Law, and the the Bookes thereunto pertaining. Now it folweth that I do in like order ſpeak of the Canon aw, which is more hardly thought upon among he people, for that the ſubject thereof, in many oints, hath many groſſe and ſuperſtitious matters ed in the time of Papiſtrie, as of the Maſſe, and ch other like trumperie; and yet there are in it eſide, many things of great wiſdome, and even noſe matters of ſuperſtition themſelves, being in a eneralitie, well applyed to the ſervice of God may ave a good uſe and undeſtanding.

The Canon Law, hath his name of the Greek ord *Canon*, which in Engliſh is a Rule, becauſe it ads a man ſtraight, neither draws him on the one de or the other, but rather correcteth that which out of Levell and Line. What is the Canon Law.

The Canon Law conſiſteth partly of certaine ules, taken out of the holy *Scripture*, partly of he writings of the ancient Fathers of the Church, artly of the ordinances of generall and provinciall Councels, partly of the decrees of the Popes of ormer ages. Of the Canon law there are two prinipall parts, the Decrees & the Decretals. The De-

crees

What is the antiquity of Decrees and who were the Authors that compiled them

crees are Eccleſiaſticall conſtitutions, made by Pope and Cardinals, at no mans ſuit, and are cit Rules taken out of the Scripture, or Sentences, of the ancient Fathers, or Decrees of Counc The Decrees were firſt gathered together by B. of *Carnat*, who lived in the time of *Urban* th about the yeare of our Lord God 1114. but aft ward poliſhed and perfected by *Gratian*, a Mon the Order of S. *Bennet*, in the yeare * 1149. allowed by *Eugenius* the Pope, whoſe Confeſſo was, to be read in Schooles, and to be allead for Law.

* *Trithem.* in his ſecond Book *De viris illuſt.* ſaith, that *Gratian* wrote this Work at *Bononia*, in the Monaſterie of S. *Felix Ann.* 1127. Others ſay it was done in the yeare 1151. *Bellarmine* to reconcile the difference, ſaith that *Gratian* might begin the work according to the firſt account, and finiſh it according to the ſeco

Of all the ſeverall Volumes of the Canon L the Decrees are the ancienteſts, as having their ginning from the time of *Conſtantine* the great, firſt Chriſtian Emperour of *Rome*, who firſt leave to the Chriſtians freely to aſſemble th ſelves together, and to make wholeſome lawes the well Goverment of the Church. The dec are divided into three parts, whereof the firſt te eth of the origen and beginning of the Canon L and deſcribeth and ſetteth out the rights digni degrees of Eccleſiaſticall perſons, and the man of their elections, ordinations, and offices, ſtandeth of one hundred and one diſtinctions.

The ſecond part ſetteth out the cauſes, queſti and anſwers of this Law, which are in num 36. & are full of great varietie, wiſedome, & deligh

The third and laſt part, containeth matter

conſecrati

onſecration of all ſacred things, as of Churches, read and Wine in the Sacrament, what dayes and eaſts the primitive Church uſed for the receiving ereof, of miniſtring of the Sacraments in Bapſme, and the uſe of impoſition of hands, all which ſet out under five diſtinctions.

SECT. 10.

What the Decretals are, and how many parts they comprehend.

THe Decretals are Canonicall Epiſtles written by the Pope alone, or by the Pope and Cardialls, at the inſtance or ſuit of ſome one or more for he ordering and determining of ſome matter in ontroverſie, and hath the authority of a law in hemſelves.

Of the Decretals there be three Volumes, accoring to the number of the Authors that publiſhed hem.

The firſt Volume of the Decretals was gathered ogether by *Raymundus Barcinius*, Chaplain to *Gre-ory* the ninth, at his the ſaid *Gregories* commande-ent, about the yeare 1231. and publiſhed by him o be read in Schools and uſed for Law in all Eccleaſticall Courts. The ſecond is the worke of *Boni-ace* the eighth, methoded by him about the yeare 298, by which, as he added ſomething to the ordiance of his Predeceſſors, ſo he tooke away many hings that were ſuperfluous and contrary to themſelves, and reteined the reſt. The third Volume of the

the Decretals, are called the Clementines, bec
they were made by Pope *Clement* the fifth of
name, and publiſhed by him in the Councell
Vienna about the yeare of grace 1308.

To theſe may be added the Extravagants of
the 22. and ſome other Biſhops of *Rome*, whoſe
thors are not known, and are as Novell conſtit
ons unto the reſt.

SECT. 3.

What is contained in the firſt book of the Decretals.

EVery of the former Volumes of the Decr
are divided into five Books and containe,
manner, one and the ſame titles whereof the fi
every of them, is the title of the bleſſed Tri
and of the Catholick faith, wherein is ſet down
every of them a particular belief, divers in wo
but all one in ſubſtance, with the ancient Symb
or belieſe of the old Orthodox, or Catho
Church.

Secondly there cometh in place the treatie
Reſcripts, Conſtitutions and Cuſtomes, and the
thority of them, and when they are to be taken
Law: after followeth the meanes whereby the g
ter Governours of the Church, as namely, Arch
ſhops, Biſhops and ſuch like, come unto th
roome; which was in two ſorts according as
parties place or degree was when he was called

to the roome, as if he were under the degree of a Biſhop, & was called to be a Biſhop, or being a Biſhop, was called to be an Archbiſhop, or to be the Pope himſelfe, he was thereto to be elected by the Deane and Chapter of the Church where he was to be Biſhop, or by the Colledge of the Cardinalls in the Popedome; but if he were already a Biſhop or an Archbiſhop, and were to be preferred unto any other Biſhoprick or Archbiſhoprick, then was he to be required by the Church, he was deſired unto and not elected, which in the Law was called *Poſtulation*; after *Poſtulation* followed tranſlation by the ſuperiour, to the See to which he was poſtulated or required: after Election followed Confirmation and Conſecration of him that was elected, which both were to be done in a time limited by the Canons, otherwiſe the party elected loſt his right therein.

Biſhops and other beneficed men, ſundry times upon ſundry occaſions reſigne their benefices, and therefore is ſet down what a renunciation or reſignation is, who is to renounce, and into whoſe hands, and upon what cauſes a man may renounce his benefice or Biſhoprick: and becauſe under-Miniſters are often times negligent in their Cure, that the people in the meane time may not be defrauded in Divine Service, the Sacraments and the food of the Word of God; it is provided, that the Biſhop ſhall ſupply the negligence of ſuch Miniſters as are underneath him in his Juriſdiction: beſides becauſe holy orders are not to be given but by impoſition of hands, with prayer and faſting,

* Foure ſit times in the yeare are limited for t
ſame; where alſo is ſet down how they are to
qualified which are to be ordered, what triall
examination is to be had of them, what age th
are to be of, and what gifts of body or min
they are to be endowed withall: what Sacrame

* The old Romans inſtituted threeyearly Solemnities in honour of their Gods for the Fruits of the Earth: Theſe alſo the Ro Church obſerved, having firſt moderated their ſuperſtition, directed them to a more ſacred end. To the three, one of the P (as they ſay) added the fourth, with a reſpect had to thoſe o Jewes, in *Zech.* 18. 19. and ſo they were called *Jejunia quatuor porum.* That inſtitution at the firſt had many other cauſes, which ſee the Sermons of *Leo* and *Durants Rationale*, but in after t at theſe Solemnities, eſpeciall regard was had to the Ordinati Prieſts and Deacons, which had been formerly performed onely a yeare, in the Moneth of *December*, (as *Amalarius* hath obſerve It ſeemeth therefore to be otherwiſe then as *Bellarmine* hath diſpu whoſe opinion it is, that theſe Faſts may be fetch't from the Apo times, and that one of theſe foure is mentioned by S. *Luke* in S. *P* voyage to Rome, *Act.* 27. though the Syriack Paraphraſt in that p plainely ſetteth down for the Greek διὰ τὸ νῆ ταῖς νηστείαις παρεληλυθέναι רעבר אע יומא רצימא ריהורי calling it, a F of the Jewes, not Chriſtians. But the great and learned Cardinal his devotion to ſacred Orders, tooke any opportunity to make t Solemnities in every circumſtance Apoſtolicall.

In what manner, and with how much care and Chriſtianity t Faſts have been heretofore obſerved, it may be noted out of the cond Councell of *Millaine. Tit.* 22. *Decr.* 22. where the Biſhop is to c mand that upon the Sunday before theſe Faſts, *Parochi non ſolum ſol illud jejunium denuncient, verum etiam in ſua unuſquiſque eorum P chiali Eccleſia ſupplicationes Litaniaſque pie ac religioſe vel intus b vel proſequente fidelium multitudine foris, Eccleſiam, ſicut moris eſt, o ut Dei ope implorata tum Epiſcopus in eorum delectatu quibus ordines ferret Spiritus Sancti lumine illuſtretur; tum illi quibus conferuntu vitæ ſanctitate, doctrina, religioſiſque virtutibus proficiant.*

In the fourth Councell of *Millaine* is ſet down out of *Leo*, t
fou

orme of bidding theſe Faſts in the Church, *Quod ſacrorum temporum atio, &c.* and afterwards *Quarta igitur, ſexta-feria & Sabbato jejune-us, frequentes in Cathedrali Parochialique Eccleſia ad litanias Oratio-emque conveniamus, & quo ſacris illis Feriis à cibo abſtinentiores eſſe ebemus, eo abundantiori eleemoſynarum liberalitate erga Chriſti paupe-es efuſiores ſimus : tum Sabbato ſub veſperum orationem Parochialem ommunem celebremus, qua & pro ſpe fœlicitatis æternæ ad quam per dem currimus, & pro ſacra ordinatione, quam eo die à Reverendiſſimo piſcopo habere ſolenni eſt, & pro iis commodis quæ ſingulorum annorum evolutione conſequimur Deo omnipotenti gratias agamus &c. Tom-Concil. Edit. Bin.*

Theſe four Faſts at this preſent day are obſerved in our own Church, nd are known unto us by the name of Ember weeks. And (ſo I find in *Thomas Becon*) by opinion of much people, theſe dayes being alled Imber-dayes, becauſe that our elder Fathers would on theſe ayes eat no bread, but Cakes made under aſhes, ſo that by the eating f that, they reduced into their mindes that they were but aſhes, nd ſo ſhould turne againe, and wiſt not how ſoon, &c. And that theſe mber-dayes were duely and devoutly obſerved by our Anceſtors, e may be perſwaded out of the Lawes of King *Cnute:* where it is ſaid 16. ⁊ ƿ man ælc bebeodam ƿæſten healde ſy hit ymbren æſten ſy hit lenzten ƿæſten ſy hit ellef oþre ƿæſten nd ealpa zeornfulneſſe, That every man obſerve the Faſts hich are commanded, withall earneſt care, whether it be the mber Faſt or the Lent Faſt, or any other Faſt: And Chap. the 17. beo þam halzam tidum eal ſpa hit þiht is eallum cri-tenum mannum ſyð ⁊ rom zemene ⁊ ælc þacn to tþæmed. here the Law ſaith, That it is meet and right, that at theſe Faſts, alice being laid aſide, all men ſhould be at peace. And concern-g the outward obſervance in the 43. Chap. it is ſaid : yfel bið ƿ man ƿæſten tide æn mæle eþe ⁊ zyt þinre ƿ man mið hire mete hine ſylfne afyle. Evill it is that upon a Faſt day man ſhould eat any thing till meal time, and it is much worſe if he ould eat fleſh meat. This was the Religion of our Anceſtours ; and ignorance could admit of ſo much devotion, how much more would e expected from theſe knowing times?

may be reiterated what not: that miniſters ſons
not to ſucceed their Fathers in thoſe benefic
wherein their Fathers immediately before w
Paſtors or Governours, leſt hapily thereby mi
be claimed a ſucceſſion or inheritance in the ſa
that no bondmen or accountants, men diſtorted
deformed in body, bigamiſts or twice married
be admitted to holy orders.

Of wandring Clerks, and how they are not to
admitted to miniſter in an other Dioceſſe, t
where they are ordered without the Diſmiſſ
Letters of the Biſhop, under whom they were o
red. Of Archdeacons, Archprieſts, Sacriſts, Vic
what they are, and wherein their particular o
do conſiſt. Of the office of Judges in generall,
their power, whether they be Delegats, Le
à latere, or Judges ordinarie. Of difference in
riſdiction between Miniſters and Miniſters, and
obedience the inferiour Miniſters are to yeild
their ſuperiours. Of Truce and Peace which Ec
ſiaſticall Judges are to procure; that truces be
from Saturday in the Evening, untill Munday in
Morning, and that there be no fighting from
firſt day of Advent, untill the eigth day a
Twefe tide, and that warre do likewiſe ceaſe fr
the beginnig of Lent, untill the eigth day after Ea
under pain of Excommunication, againſt him
preſumeth to do the contrarie; and that in tim
warre, neither Prieſts, Clerks, Merchant-men, co
try m n, either going to the field, or com
from the field, or being in the field, or the ca
with which they plough, or the ſeed with wh

ney ſow, be hurt or violated. Judges, before men nter into the dangerous events of the Law, are to erſwade the parties litigant by private covenants nd agreements to compound the controverſie etween them, wherein if they prevaile not, then e parties are to provide themſelves of Advocates, roctors, or Sindects according as they are private en, or bodies politick to furniſh their cauſe, and ect them in proceeding.

If any Church hath been hurt in any contract of rgain, or ſale, or in demiſing of any Leaſe, or by e Proctors negligence, it is to be reſtored againe to he former ſtate, to alleadge and plead that for ſelfe which is agreeable to Law and conſcience. he like grace is to be granted to all other Litigants hatſoever, who have by feare or violence, or a- other like unjuſt cauſe, being hindered from the roſecution of their right.

If any ſeeing a ſute like to be commenſed againſt m, do either appeale before he be ſerved with oces, or alienate away the thing whereupon the t was lik to grow, he is to be compelled to hold a of the ſame cauſe, before the Judge from om he did appeale, and to anſwer his adverſarie, though ſtill he were owner of the thing he did policie ſell or alienate away.

Many times; things which otherwiſe can have no edy end by Law, are compounded by Arbitre- nt. Arbitrators ought to be odde in number, that hey diſagree, that which is concluded by the eater part may prevaile. An arbitrement is a wer given by the parties litigant to ſome, to heare *Arbitrement.*

hear and determine some matter in sute betw
them, and to pronounce upon the same, to wh
they are to bind themselves under a penalty
stand.

SECT. 4.

What is contieined in the second Book of the Decretals.

THe first Book having set out the first obje
the Law, which standeth in the persons
make up the Judgement, as in the person o
Judge himself, the Advocates, Proctors and Cl
there followeth in the second Book, the se
object of the same, which is the Judgements t
selves, which are to be commenced by a Cita
and that in a competent Court fit for the same,
a Libell offered up in the Court by the plaintif
the Judge, which is to contain the summe o
which is required in Judgement; where, if th
fendant doe again reconvent the plaintife, he
answer, albeit the defendant be not of that J
diction: that Libell being admitted, the defe
is to joyn issue, and yet before either of them
any further into the cause, that there may be
and sincere dealing in the same, and that all
tion of malitious dealing therein may be tak
way, each of them are to take an oath, the P
tife, that hee doth not of any malice prosecut
suite against the Defendant, or the Defendant o
m

nalice maintain the ſute againſt the Plaintiſe, but hat they verily believe their cauſe is good, & that hey hope they ſhall be able to prove, the one his bell, the other his exceptions, if he ſhall put in any nto the Court. The cauſe being begun, delayes are ften granted, if either there come any holiday be- ween, or any other the like juſt cauſe be offered, for producing of witneſſes and ſuch like: if there e no juſt cauſe of delay, then the Judge is to goe n in the due courſe of Law, ſ provided alwayes hat more be not demanded by the plaintife then due) and that the cauſe poſſeſſory be handled be- re the petitorie, and that hee that is ſpoyled, be ſt and before all things reſtored to that thing or ace whereof he was ſpoyled, or from which hee as put; yea, though he have nothing elſe to al- dge for himſelf, beſides the bare ſpoliation it ſelf, the one ſide or other wilfully or deceitfully de- ine Judgement, the Judge is to put the other in oſſeſſion of that which is in demand, or at the aſt to ſequeſter the fruits and poſſeſſions of that hich is in controverſie, but if both parties appear nd joyne iſſue affirmatively, then is it but a que- on of Law, and not of fact, neither doth there re- ain ought elſe to be done by the Judge, but that give ſentence againſt him that hath confeſſed it, nd put his ſentence in execution. But if iſſue be yned negatively, then is the plaintife to prove his bell, ſo farre as it conſiſts in fact, by witneſſes hich are to be compelled by Law if they will not me, or appear voluntarily, by publick and private ſtruments, by preſumptions, by conjectures, by

oath; which being done, the Defendant in like
is to be admitted to prove his exceptions, and
his preſcription if he be able to alledge any, in
he is Plaintife, niether is hee bound thereto, be
the Plaintife have perfected and proved his
right.

After proofs are brought on either ſide, and
ſame throughly diſputed on by the Advocates,
Judge is to give ſentence, which he is to frame
cording to the Libell & proofs formerly dedu
in the cauſe. The ſentence being given, Executio
to be awarded, unleſſe there be an appeal
from it within ten dayes by the Law (but fif
dayes by the Statute of this Land) from the
the party, againſt whom ſentence was given,
knowledge thereof, or unleſſe it be appealed im
tinently at the acts, and in writing before a
blike Notary. or at the leaſt the party againſt wh
the ſentence proceeded, with due time, take
journey toward the higher Judge to proſecute
ſame, by whom the former ſentence is either
firmed or infirmed, in the ſecond inſtance.

SECT. 5.

What is the ſubject of the third book of the Decretals.

THe third book conteineth ſuch Civile matt
and cauſes as are lyable to the Eccleſiaſti
Courts, as the honeſt life or converſation
Cler

lerkes, and their comely comportment in all their emeanour, with what women they are to cohabit, d dwell with, whereby they may be free from all ſpition of ill life, and with whom not, which of em may bee married by the law of the Canons, d which not, in whot caſes they may be allowed be non-reſident, and in what not, and how ſuch are non reſidents may be called home unto their ure, and if they return not upon proceſſe ſent out gainſt them, how they are to bee puniſhed, name- by deprivation or ſequeſtration of the fruits and ommodities of their benefice.

Prebends and dignities are preferments for lerkes, but for ſuch as are idle or abſent from the me without juſt cauſe: but if any Clerke or Mi- iſter be ſicke, and his diſeaſe be curable, he is to re- eive the benefit of his prebend or dignity in his ab- nce, as though he were preſent; but if it be con- gious, or uncurable, then he is to be put from the xerciſe of his office, and a helper or coadjutor to e joyned unto him, and they both to be main- ained of his ſtipend.

Prebends or dignities are to be got by inſtitu- ion, which are to be given by the Biſhop, or his Chancellour, or ſuch other as have Epiſcopall ju- riſdiction, without which, neither any benefice is awfully gotten, nor can lawfully be reteined. Be- nefices not voyde, ought neither to be granted, within ſixe moneths after knowledge of the voy- dance thereof, otherwiſe the grant of them devol- eth, and commeth unto the ſuperiour: hee that cauſeth himſelf to be inſtituted into a benefice, the

In-

Incumbent thereof being alive, himſelf is to be
poſed from his orders.

While any Benefice, or Biſhopriek is void, noth
is to be changed or innovated in it; and ſuch g
ſales, or changes of *Eccleſiaſticall* things, a
made by the Biſhop, or any other like Prel
without the conſent of the Chapter, are voi
Law: and ſuch Benefices as doe become void,
to be beſtowed without any impairing or dimi
tion of the ſame.

In what caſe the goods and poſſeſſions of
Church may be alienated, and in what not;
that ſuch things as are alienated, be alienated by
greater part of the Chapiter, otherwiſe the al
tion is void: What goods of the Church ma
lent, what ſold, what bought, what chan
what demiſed, or let to leaſe, what
gaged, or let to pawne. After theſe fellow
ſtates of laſt Wils and Teſtaments, of ſucceſſio
way of Inteſtate, of Burials, of Tythes, firſt F
and Offerings: Of Monkes, and their ſtate in ſu
ſorts; of the right of Patronage; of Synodals
Procurations; of conſecration of Churches; of
lebration of Divine Service, and the Euchariſt
Baptiſme, and the effect thereof; of a Prieſt
baptized; of Faſting, Purification of women,
other like ceremonies pertaining to Eccleſiaſti
diſcipline: Of building and repairing Church
and of their Church-yards, and the immun
that belongs to them both, and of ſundry o
things in like ſort pertaining to the Church. T
Clerks and other Eccleſiaſticall men trouble
the

themſelves about Civile matters, contrarie to their office and profeſſion.

SECT. 6.

What is conteined in the fourth Book of the Decretals.

THe fourth Book diſpoſeth of matters of Eſpouſals and Matrimonie, and ſheweth what words make Eſpouſals, what Matrimonie, of the betrothing of ſuch as are under age, of clandeſtine Eſpouſals and Contracts, and of what account they are to be had of in the Church, and how they may be made good: Of her that hath betrothed her ſelf to two men, whoſe wife ſhee ſhall be; what conditions may be put in Eſpouſals, and what not; what Clerks or Votaries may marrie, and what not: Of him that hat married her, with whom before he hath committed adulterie, and whether the ſame ſecond Matrimonie be good, whereupon the reſolution of the Law is, that if the woman knew not that he had an other wife, hee cannot leave her, his firſt wife being dead, under pretence he had an other wife alive when he married her; but if ſhee knew of it, and did joyne with him in practiſe for making away his wife, he cannot marry her, no though he were ſeparated from the other, as concerning bed and boord: Whether leprous men, and other which are infected with like contagious diſeaſes my marrie, and whether being married, the marriage

marriage may not be dissolved upon this point: kinred Spirituall or Legall, and in what sort hinder marriage; of him that hath known his wifes sister, or his own cousin german, and whe this offence doe break the Matrimonie that is tracted, or doe hinder the Matrimonie that be contracted: Within what degrees of consan nitie or affinitie a man may marrie: Of such as cold of Nature, or inchanted by Sorcery, whe they may marrie; the like respect is of women, are unfit for men: Of such as marrie against the terdict or prohibition of the Church, and what naltie they incurre: What children be held le mate: who they be that may be accusers or nesses in cases of dissolution of Marriages betw man and wife: Of Divorces between man and which are caused by the diversity of mindes are then between them, for that one seeketh to apart from the other; and in what cases divo are allowed, and how many kinds there be of th of gifts between man and wife, what security have in Law, and that the Dowrie after the vorce be restored to the woman, so that it be no case of Adultery, and other such like filthinesse: second Marriages, in what cases they are to be mitted, in what not.

SECT.

SECT. 7.

What is the ſubject of the fifth Book of the Decretals.

THe fifth Book treateth of ſuch Criminall matters as are handled in Eccleſiaſticall Courts, wherin the proceeding is either by accuſation, whereto the Accuſer doth ſubſcribe his name, becauſe it tendeth to puniſhment: or elſe by denunciation, whereto the Informer doth not ſubſcribe his name, becauſe it tendeth only to the amendment of the party: or by Inquiſition, which for the moſt part is not uſed, but upon fame precedent, albeit ſometimes it be without fame: if once the fame be proved, then may enquiry be had of the trueth of the fact, but yet without malice or ſlander. The Criminall matters which are proſecuted in the Eccleſiaſticall Courts, and cenſured by Canonicall puniſhments, are Symony, and ſelling of Eccleſiaſticall places and benefices; whereupon Prelates are forbid to let out their Juriſdictions under an annuall rent, and Maſters and Preachers to teach for money. The puniſhment of Jewes and Saracens, and their ſervants, that is, If a Jew have a ſervant that refuſeth to be a Chriſtian, the Jew ſhall be compell'd to ſell him to the Chriſtian for xij. pence: That it ſhall not be lawfull for them to take any Chriſtian to be their ſervant: That they may repair their old Synagogues, but not build new: That it ſhall not be lawfull for them upon good Friday,

to

to open either their doors, or windowes: That th
wives neither have Chriſtian Nurces, nor themſel
be nurces to Chriſtian women: That they wear
vers apparell from the Chriſtians, whereby t
may be known, and other ignominies of like ſ
Who be Hereticks, and what be their puniſhme
who be Schiſmaticks, and what be their pu
ments. Of Apoſtataes, Anabaptiſts, and their
niſhments: Of thoſe that kill their own child
and their puniſhments: Of ſuch as lay out yo
children, and other feeble perſons to other men
ty, which themſelves have not, and how they
to be puniſhed: Of voluntary or caſuall murth
Of Tilts, Barriers, and Tornament: Of Clerks
fight in combate: Of Archers that fight a
Chriſtians: Of whoredome, and adultery, and
they are to be puniſhed: Of ſuch as raviſh wo
and their puniſhment: Of Thieves and Robb
Of uſury and the pain thereof: Of deceit and
ſhood: Of Sorcery: Of colluſion and coſenag
the revealing of the ſame: Of childrens offe
and that they are not to be puniſhed with the
ſeverity as mens offences are: Of Clerks hunter
hawkers, who if they often times uſe and ſp
themſelves therein, if they be Biſhops, they a
be ſuſpended from the Communion three mon
if Miniſters or Prieſts two, but if he be a Deacon
is to be ſuſpended from his office: If a Clerk o
times ſtrike other men, and being admoniſhed
forbear ſuch kind of violence, doe neverthe
continue in his folly, he is to be depoſed: If a Bi
cauſe any man rigorouſly to be whipt, he is to
ſuſpend

ſpended from ſaying ſervice two moneths : Such
ſpeak ill of Princes, and other like great perſons
iritual or temporall, are to be puniſhed, ſo that
hers by their example may take heed to ſpeak ill,
ecially ſuch as blaſpheme the Majeſty of the Al-
ghty God : If Clerks excommunicated, depoſed,
interdicted, or that came to the higheſt order
thout paſſing thorough the inferiour orders, or
at came to the ſame order covenouſly, and deceit-
ly, or being not ordered at all, or at the leaſt not
dered lawfully, dare take upon them either to mi-
ſter the holy Sacraments, or to ſay divine Service,
ey are to be depoſed from their office, and from
ir benefice, and never after to be ordered : Pre-
es are not to grieve their ſubjects, either with
h ſuſpenſion, or excommunication of their per-
, or interdicting of their Churches, but they
to execute all thoſe cenſures of the Church in
diciall order : they are not eaſily to ſuffer any
n to hold two Benefices, where one may ſuffice,
to retein any thing to his own uſe, in a Church
herein he hath collation or ſubjection, and that he
not to beſtow any benefice upon any that is un-
rthy for the ſame, either in life or doctrine, with
dry other exceſſes of Prelates in the like ſort : If
y begin to build a Church or Chappell to the
judice of an other, and it be denounced unto him
the Parſon or Pariſhioners of the other Church:
at he goe no further in the ſaid worke, untill
Law hath determined it, whether it be a nuſance
not. Of the Priviledges of Prelates, and wherein
ey exceed their priviledge : Of Canonical purga-

tion

tion which is injoyned, when as yet there
certain proof of the crime, but there is a com
voyce and fame of the fact, which is to be cleere
the oath of him who is charged by the fame,
he hath not committed the fact, and the oa
his good neighbours, who ſwear they beleeve
he hath taken a true oath: * Of vulgar purga
which was performed by combate, and paſſi
burning fire, which is worthily rejected, for
thereby the innocent many times was condem
and God thereby did ſeem to be tempted: O
cleſiaſticall puniſhments due to offences, a
which one is, That ſo often as one offendeth
often hee is to be puniſhed: And that Prelate
not take reward, to winke at men in their ſinne
turne corrections into pecuniary pains, for g
filthy lucre: Of Penances and Pardons, or r
ſions: Of Ezcommunication, which is the gre
puniſhment in the Eccleſiaſticall juriſdiction,
who, and in what caſes men are to be ſtru
thereby.

* Other kinds of this vulgar Purgation were obſerved by the Ancients, as the triall by Water, by the Croſſe, and by the Body of our Lord, &c. and theſe were of ordinary uſe amongſt our own Anceſtours, eſpecially in the darker times. *Saxons* (beſides the triall by Combate, which they called C fight) commonly uſed their fire and water Ordeals. Their tri water was performed, either in hot or cold. In cold water, the ties, ſuſpected were judged innocent, if there bodies were not up by the water, contrary to the courſe of Nature. In hot, were to put their bare armes up to the elbowes, which if brought out without hurt, they were conceived to be cleer crime. They that were tryed by the Fire-ordeall, were eith paſſe bare-footed over a certain number of hot glowing plo ſhares, or otherwiſe to carrie burning irons in their hands, a ce number of paces, and according as they ſped, the were judged

nt or innocent. This horrible experiment of Fire-Ordeall in the ſt kinde, was tryed upon Queen *Emma*, the Mother of *Edward* the *nfeſſour*, with a ſneceſſe worthy of her chaſtitie. An example of e ſecond kind, and the like event, is recorded by *Eadmerus*, who lareth, that in the reign of *William* the ſecond. A company of ſel-wes being ſuſpected to have deſtroyed the Kings Deer, were en-yned for their triall, to carrie burning irons, which accordingly they d without hurt; the iſſue thereof being reported to the King, was ertained with ſuch a remarkeable indignation, that he furiouſly plyed, *Quid eſt hoc? Deus eſt juſtus Judex? pereat qui deinceps hoc cre-derit.* How ſolemnly and ſuperſtitiouſly theſe Ordeals were per-med; ſee *Lambard* out of his ancient Authour, in the word *Or-alium.* Reade alſo the *Saxon* Lawes of King *Æthelſtane*, chap. 23. here it is ſaid, that the party ſuſpected, three dayes before his tryall, uſt goe to the Prieſt, and hear Maſſe, and feed for that time upon ead, and ſalt, and water, and wurts, &c. See the reſt in the Law. eſe kinds of Purgations remained in uſe amongſt our Anceſtours, the time of *Hen.* the 3. in whoſe reign they began to be aboliſhed, her by defuetude and in reverence to his Canon Law, then by any rote of the Realme: as learned Mr *Selden* hath obſerved in the oes upon his forementioned *Eadmerus* p. 204. where alſo the Rea-r may ſee, how farre forth they were forbidden. Onely the tryall Combate, though it be abrogated by the Canon heere, is notwith-nding permitted by the Law of this Land, but of very rare and nſiderate practice.

PART. II.

CHAP. I.

SECT. 1.

What uſes the Civile and Canon Law have in this our Realme; and that the Civile Law reſpecteth, matters of ordinarie and extraordinary Cogniſance.

OF all thoſe goodly and excellent Titles of the Civile and Canon Law, ſo full of wiſ-dome,

ſo full of variety, ſo well ſerving for every mome and ſtate of the common-wealth, in peace or warre, as nothing can be more, the Profeſſo thereof have very little uſe here within this Rea

For firſt, for the Civile Law, (beſide the t Univerſities of this land, that of *Oxford*, and t other of *Cambridge*, to whom the Kings of Realme have granted a larger libertie, in the p &tiſe of theſe Lawes, then to any other place o Kingdome; for that their purpoſe was, to h young men trayned up there, in a more ripe kn ledge of theſe profeſſions, that when they c abroad, they might be more ready in all ma of negotation and commerce, that the Prin ſtate ſhould have need of them to deal in with rein Nations when they were thereto called; which the Lawes of this Land ſerve nothing a by reaſon of the difference that is between t Law, (which is either wholy the Civile Law, for the moſt part grounded on it) and the La our Nation) a very few Titles are left to the p &tiſers thereof to deal in, and moſt of them ſeld and rare in uſe, as ſhall be hereafter ſhewed, ſo I may well divide all the profeſſion of the C Law here with us, into matters Ordinary and traordinary.

SECT.

SECT. 2.

hat the matters of ordinary Cogniſance are Ma-rine, of which ſome are Civill, others Criminall, and what the Civill Marine matters are; and what manner of proceedings they have.

THe matters of ordinary cogniſance of the Civill Law here in this Land, are Marine mat-rs, of which ſome are Criminall.

Civill matters are thoſe which concerne either free uſe of the Sea it ſelf, or the rights that men ve to trade and traffique thereupon, or the bar-ins, ſales, or contracts, or as it were contracts are made or done beyond or upon the main a, or any creek thereof, or within aſmuch ſpace om the Sea, as the greateſt winter wave runneth ut, for any matter belonging to any negotiation merchandize, or any other thing to the Ship or de appertaining.

And firſt for the uſe of the Sea it ſelf; the Law olds it to be common, and that every one hath ht to trade & traffique upon the ſame, ſo that it without the prejudice of that Prince or Land, whom the Sea is adjoyning. The like may be d for the ſhore it ſelf, that it be either for the re-thing of themſelves with water, or victuall, or the repayring of their Shippes, or buying any ing neceſſary therevnto, or it bee either for ut-ring of any commodity they have, or buying y thing again of the people, upon whoſe land they touch:

ff adlegem Rhodian. de Jactu. tot. tit.

touch. In which caſe it were barbarous to re
any, comming in peaceable manner ; albeit it
happen upon ſome jealouſie of the State, either
that it hath ſome great forrain Enemy, whoſe c
tinuall invaſion they fear, or that the Sea coaſts
much infeſted with Pyrates, that in this caſe
ſtance may be made; but when it is made man
by flag of Truce, or otherwiſe, they are no o
but well meaning men, they are to be entert
with all kindneſſe.

For Contracts in Marine cauſes, ſome are c
tracts in deed, ſome are as it were contracts: C
tracts in deed are all bargains and ſales whatſo
made between Merchant and Merchant for
commoditie, fraught or traffique in the ſhip, o
ſale or bargain made of the ſhip, or any thing th
to belonging, as Maſts, cordage, anchorage,
&tuals, or any other thing of like nature, neceſ
for the imployment of the ſhip.

Thoſe things which are as it were contracts,
thoſe perpetuall rights which are between the P
ſer or Maſter of the Ship, and the Paſſengers,
between one paſſenger and another.

The perpetuall right which is between the P
ſer or Maſter of the Ship, and the Paſſengers is,
the Purſer or Maſter be anſwerable for all
wares or goods as are brought into the ſhip,
ther it be delivered to himſelf, or any of his M
ners: for he ought not onely to be jnſt and h
himſelf, but alſo uſe the miniſtery of honeſt pe
about him ; and therefore the Maſter of the ſh
no leſſe bound for their perſons then his own.

Paſ

aſſengers again are honeſtly and readily to pay the
aſter of the ſhip their fraught, and all ſuch other
arges of dyet, and other proviſion as they have
t him to; wherein if there be any default of any
e, the Law offordes an action called *Exercito-*
a, whereby the one or the other may be relieved.

The Maſter of the ſhip is he, who hath the charge
the whole anchorage and government of the
ip, and his office is either to let the ſhip to hire,
to buy and ſell Merchandiſe, or to plie fares, or to
ovide tacle and furniture for the ſhip. *L. 1. ff. de exercitoria axion.*

The Purſer, whom the Law calleth *Exercitor*
avis, is he to whom all the profit or revenue of
e ſhip doth come, whether it be in his own right,
in anothers. *D. eod l. prima §. 16. de exercit. action.*

The perpetuall right that is between paſſengers
d paſſengers, and ſaylers and paſſengers is, that
caſe of ejectments, and caſting out of goods,
d other merchandiſe into the Sea in time of tem-
eſts, or other dangers, by rocks or quick ſands,
the lightning of the ſhip, becauſe it is for the
mmon good of all that are in the ſhip, and the
ſervation of the reſt of the fraught of the ſhip,
be made up with the common contribution
all: for good reaſon it is, that they whoſe goods
e ſaved hereby, ſhould again with their goods
deem the others loſſe, according to ſuch pro-
rtion of goods, as they have in the ſhip, and the
w of the Sea allowes.

But in caſes of Ejectments, the Law of the Sea is
is (which was taken from the people of *Rhodes*,
ho in old time were great ſeafaring men, and diſ-

coverers of ſundry countries, whoſe rules even this day are holden for good among all Marrin for the great equitie and indifferencie that i them) that as well the Maſter or purſer of the himſelfe ſhall contribute for the preſervation of ſhip, as alſo the paſſengers for ſuch ware as t have in the ſhip, of what ſort ſoever it be, al happily it be but of ſmall weight, as pearles pret ſtones and ſuch like; and if perchance there be paſſengers in the ſhip who have no ware or chandiſe in it, yet becauſe themſelves are a bur to the ſhip, eſtimate is to be made of his or their parell, rings, and jewels, according to which they are to contribute towards the loſſe of things as are caſt out into the ſea: neither is any thing in the whole ſhip excepted, ſave things which are put therein to be ſpent for common good of all, as victuals, fuell, and like; for thoſe things are not brought in for one private mans uſe, but for the benefit and ſe of all: and ſo much the rather, for that if vi or other like neceſſaries want, every one muſt tribute thereto, or impart that which he hath his own private proviſion; but of mens own dies, unleſs they be ſervants, there is no ra be ſet, becauſe a free-mans body cannot be eſteemed.

In priſing, eſtimate is to be made as well of t things which are loſt, as thoſe things which ar ved, and the price is to be ſet down, not for much they were bought, but for how much might be ſold, and that for the preſent, le

contributors ſhould be overmuch charged. Neither is it to the purpoſe that the goods which were loſt, might have been ſold for more, for that herein regard is not to be had of the gaine but of the loſs. And if any thing that was thrown out were known or made worſe by waſhing with ſalt water, it is not to be eſteemed as a new freſh thing, but the price thereof is to be rated accordingly.

Now the contribution is to be made in this manner, firſt the loſſe is to be ſet down, then the rate of thoſe things which are ſaved, out of which muſt be drawn an equall portion, proportionable to the quantity of every mans good he hath in the ſhip, to make up the loſſe, deducting out of the loſers goods for himſelfe, ſo much as is anſwerable to his proportion, ſo that he ſhall neither be made a cleer lover, nor a cleer looſer, but in a certain quantitie rateable to his part.

But this contribution is in that caſe to be made, if the ſhip be ſaved; for otherwiſe if a wrack happen, either before the ejectment, then whatſoever any of the vectors or paſſengers catch, is his own; neither is there any regard to be had of the loſſe of the ſhip, or of the goods, unleſs perhaps afterwards they be drawn out of the ſea.

But here we are to note, that neither the things that are thus ejected, ceaſe to be the firſt owners, neither become his that takes them up; for becauſe the firſt owner doth not count them for goods caſt away, but ſtill he beares that mind to them, that if he may recover them, he will hold them as his own goods, and in conſideration of ſo much

as afterward he ſhall recover, the contribution
the reſt ſhall ceaſe.

Neither if the Maſter of the ſhip himſelfe by
lence of the Tempeſt, ſhall looſe a Maſte or a S
ſhall he be more allowed therefore then a Car
ter to whom a houſe is let out to be built, ſha
allowed for his axe or ſawe if he breake it.

Beſide in matters of wrack, there is as it wer
contract between them which have loſt their go
by ſhipwrack, and them upon whoſe Lands the
goods are driven, that the ſame be reſtored to t
or their heires if they come in due time to cl
the ſame: and therefore it is preciſely forbid by
Law, that no man ſhall meddle with ſuch a
wracked, and ſuch as are proved to have ſ
any thing thereout are holden for robbers;
that ſuch goods being caſt on land, and recov
out of the ſea, remaine ſtill his who was the o
thereof, and deſcend upon his heire, neither exc
unto the King, neither to any other whom
King hath priviledged in this behalfe. And there
the Emperour *Conſtantine* the great, ſaith wort
in this caſe; *If any ſhip at any time by ſhipwrack*
driven unto the ſhoare, or touch at any land, le
owners have it, and not my Exchequer meddle wit
for what right hath my Exchequer in another
calamitie, ſo that it ſhould hunt after gaine in ſ
a wofull caſe as this is? And yet if no kindred
peare within a yeare and a day, or appearing pr
not the goods ſhipwraked to be theirs, the go
come to the Exchequer even by that Law: ſo
that law condemneth careleſneſs, which is wri

L. ne quid. ff. de incendio, ruina, & naufragio.

L. 1. lib. 11. C. de naufragiis.

Vigilanti

vigilantibus & non dormientibus. And with this agree the Lawes of this Land, as taken out of thoſe Imperiall lawes; whereby it is ordered that ſuch goods as are ſaved out of the wrack, ſhall be kept by the view of the Sheriſe, or ſome other chief Officer, and delivered to the hands of ſuch as are of the place where the goods were found, ſo that if any ſue for them, and prove them to be his, or to have periſhed in his keeping, they ſhall be reſtored unto him without delay; otherwiſe they eſcheat unto the King, or to him to whom the King hath granted the ſame: And if any convey away any part of the ſame goods contrary to the law, and be attainted thereof, he ſhall be awarded to priſon, and make fine at the Kings will, and yeild damages unto the party grieved: and a wreck by the lawes of this land, is where all living things within the ſhip do periſh, * but if a man, a dog, or a cat do eſcape out of a ſhip it is otherwiſe.

* *Mes ſi un homme, ou un chieu ou catte eſcape vive iſſint que le partiea que les biens ſont vcigum deins lan & jour & proove les biens deſtre ſes il avera eux arere per proviſien del Statute de Weſtminſt. I. cap. 4. fait en les jours del Roy. E. F. I*

For matters of contract, they are either in the petitorie, or in the poſſeſſorie. The Petitorie is where the propertie of any thing is challenged, this of all other ſuites is the hardeſt, becauſe the proof thereof is very difficill: for albeit the propertie of things may be got by many meanes, as well by the law Civill, as by the Law of Nations; yet it is not a thing ſo eaſie to be proved, for that there muſt concur many things to the proof of a proprrty otherwiſe you ſhall faile in your ſuit, as in caſe of barraine and ſaile, that there was ſuch a contract between the buyer and the ſeller, that there was either money payd for it, or that he that ſold it was con-

Inſtitut. de rerum dimiſſione §. ſingulorum ff. de acquirendo rerum dominio. l. adeo & toto titul. C. de quadriennii preſcriptil. bene.

C. de acquirend. possess. l. 1. ext. c. 1. de consuetudin.

content to take buyers word for it, that deli
was made thereof, otherwise the property pa
not, but onely in some few cases, in which nei
possession nor delivery is required. Lastly, tha
which sold it was rightfull owner of it, other
can he not passe over a thing he had no r
unto.

The Lordship or propertie of a thing is bipar
for either it is direct or full, such as men h
when they have not onely the thing it selfe, wh
of they are Lords or Proprietaries, but also th
and comodity thereof; or else it is profitable, s
the hold of Tenants and Farmers, who have
use, gaine, and possession of the thing, but the L
the property and rent in acknowledgement of
right and Soveraignty.

The Possessorie is that right whereby the u
possession of a thiug is claimed of which ther
three sorts: for it is in getting the possession of
a man hath not, or in keeping of the possessio
that a man hath, or in recovering and regainin
the possession of that which is lost.

The proceeding in all these Civile matters, h
Libell concluding to the action, the partie a
giving caution to prosecute the sute, and to
what shall be judged against him, if he faile in
sute: the Defendant on the contrary part, sect
his adversarie by sufficient suretie, or other cau
as shall seem meet for the present to the Ju
that he will appeare in Judgement, and will
that which shall be adjudged against him, and t
he will ratifie and allow al that his Proctor shall

his name: for to all these ends satisdation in judgement is, which is nothing else but a course to secure the adversarie of that which is in debate before the Judge, that on what side so ever the cause shall have an end, the clients may be sure to get that, which by law shall be adjudged unto them.

SECT. 3.

What are the Criminall marine matters, whereof the Law Civile holdeth plea here with us, and what proceeding they have.

AND so much of those Civile Marine matters whereof the Civile Law here in England usually holdeth plea. Now of the Criminall matters which belong to that Court, but yet by way of Commission from the Prince, and that is that horrible crime of Piracie, detested of God and man, the actors wherein *Tully* calleth enemies to all, and to whom neither faith nor oath is to be kept.

Piracie is called of the Greek word πεῖρα, which is * *Deceptio* in Latine, and in English *Deceipt*, for that many times they pretend friendship when they intend nothing else but robberie and blood-shed; or they are so termed of the word πεῖραν, that is, of their wandring up and down, and resting in no place, but coasting hither and thither to do mischief.

A Pirate is a Sea-thiefe, who for to enrich himself either, by subtilty or open force, setteth upon Merchants and others, trading by sea, ever spoyling them

† *Cicer.* 3. *lib. off.*

* In an Attick sence, for they said πεῖραν, Αντὶ τοῦ δόλου καὶ τέχνη, and from this sence οἱ κατὰ θάλασσαν κακοῦργοι, were called πειραταὶ, Pirates, as the *Scholiast*, of *Sophocles* hath noted upon *Ajax*.

them of their loading, if they get the upper h
and ſometimes bereaving them of their life
ſinking of their ſhips.

The proceeding of thoſe criminall matters, b
accuſation and information, and after by tria
twelve men, upon the evidence, according to
lawes of this land, and the lawes of the anci
Feudes of *Lombardie*, where the like tryall is,
from whence it ſeemeth this of ours was firſt d
ved. But here muſt we note that matters of repr
are no piracies, although many times there fal
no leſs outrage in them, for ſpoyling and ſlayin
men, then doth in the other: for that Repriſal
done by the Princes commiſſion, granted to
ſubject, for redreſſe of ſome injurie done to
ſelfe or his ſubject, by ſome other forreine Prin
ſubject, and amends hath been required by law,
cannot be had, whereupon licence is given to
ſubject to relieve himſelf by what way he ca
the other Prince, or any of his ſubjects, by taki
much goods of his, as himſelf was indam
which courſe is held among Princes, the rathe
afford Juſtice where it is lawfully demand
Bartol. l. nullus num. 2. C. de Judæis & Cælicolis.

SEC

SECT. 4.

That the things which extraordinarily belong unto the Cogniſance of the Civile Law, are of three ſorts, and concerning the firſt, which reſpecteth treaties between Prince and Prince.

AND thus much of the cauſes, which ordinarily do belong unto the Cogniſance of the Civile Law withiin this land. Now it followeth, that I ſpeake ſomewhat of thoſe things wherein the Civile Law dealeth incidently, and by authority of the Prince, and is not the ordinarie object of the Civile Law, howſoever otherwiſe they cannot be handſomly dealt in, but ſuch as have the skill of the Civile Law.

Whereof there be three ſorts, the firſt is matters of forreine treatie between one Prince and another, the ſecond is the ordering of martiall cauſes, whether they be Civile or Criminall in an Army; the laſt is the Judgements of Enſignes and Armes, and the deciſions for challenges of rights of Honour and precedencie, where any of them is in controverſie.

For the firſt, whereas all other Nations in compaſſe round about us be governed by the Civile Law, and treaties are to be decided by Law (both for thoſe things which are in queſtion, and to be concluded by Law, and for thoſe things which are determined by conſultation and agreed upon) who is thereto to be choſen rather than a Civilian, to whom

whom their Law is known, as well as to themſel
and if perhaps he underſtand not their langua
yet he underſtandeth that language wherein
Lawes themſelves are written, and is the firſt to
for treatiſes between Princes & Princes, becauſe
a common tongue to be learned of all the Weſt p
of the world, & thereby any Prince ſhall reteine
own Majeſty in parlying, as it were, in his o
language, and not be forced to ſpeake in an ot
Princes tongue, which, no doubt, is a great di
vantage to him that ſhall treat; for that every
tion hath ſome proper *Idiom*, not ſo well diſcer
by the book-ſpeaker, as perceived by the Native
the countrey where it is ſpoken, & wherein a ſt
ger may eaſily be deceived.

How much forreine Princes do eſteem of
skill of a Civilian in theſe matters, it may be und
ſtood thereby, that they never for the moſt p
ſend any Embaſſage for the the treaty of any le
or matter of commerce, but that one or more
them are Civilians. And if the care of theſe th
be ſo great with them, ſurely the eſtimation of
ſame ought not to be light with us: for by w
lawes their leagues and negotiations uſe to be di
cted, by the ſame muſt ours be ordered, ſo t
for that point, one kind of learning muſt ſerve f
both; for that otherwiſe one Nation will not
convinced by the other what their capitulatio
are.

Surely ſuch as over and beſides their own exp
rience, have the knowledge of the Civill La
have herein a double help above another man th
wanteth

nteth the ſame. Firſt, their own underſtanding, hich for the moſt part is of like proportion as her folks is: The skill of the Lawes themſelves hich are a quinteſſence of wit above other hu- ne learning, and were either wholy compoſed of e mature and deliberate reſolutions of ſuch Em- rours as then ſwayed the whole world, or were e dooms and judgments of ſuch wiſe men as then naged the whole world, and the affaires thereof der them. But who, when he ſeeth a ſword in its bard, knoweth whether it will cut or not, al- ough the forme thereof be a preſumption, that it ll: but, do but draw it out of the ſcaberd, and y the blade thereof, and then ſhall you ſee the rpneſs of it: I make no application hereof, for at my meaning by my words may be well enough own.

But in theſe matters the wiſdome of the State owes beſt what is to be done, and I onely remem- r what other Nations do, leaving the reſt to eir graveſt conſiderations, who by precedents of mer times, and men of experience, furniſhed th exotick tongues, have carried this part of pol- cie very well and ſafely hitherto: but now to the dering of Martiall cauſes.

SECT.

SECT. 5.

What are Martiall causes, which are the sec extraordinary matter belonging to the Co sance of the Civill Law with us.

MArtiall causes are either Civill or Crimi whereof both are determinable by the C law. A Civill Martiall Cause, is where either Captaine or the Souldier requireth something t is due, and withholden from him, as his stipe his apparell, which among the *Romans* was twice a yeare, that is, the Sommer apparell fr the first day of Aprill to the first of September, their Winter from thence to Aprill; his diet wh among the *Romans* was two dayes hard bisket, third softer bread, one day wine, another day neger, one day bacon and two dayes mutton; priviledges either in cases of preferrment, as to removed from one degree to another, or in case immunity, as to be freed from all servile function sundry other like, which a diligent reader may therout of the Digest & Code of militarie affai and other like titles which accompany them.

ff. de re militari & C. eod. tit. l. 12. ff. de privilegio veteranorum: & de castrensi peculio & C. eodem tit. l. 12. C. de erogatione militaris annona & C. de vest. militari.

Souldiers faults are either proper to themsel or common with others.

Those are common with others which other m fall into, and are corrected with like ordinary p ceeding, as other crimes of like nature are, as m slaughter, theft, adultry and such like.

Those are proper which do properly appert to militarie discipline, and are punished by so unus

unuſuall or extraordinary puniſhment, as are theſe not to appeare at Muſters: to ſerve under him he ought not to ſerve: to vage or wander long from the Tents, although he returne of his owne accord: to forſake his Colours, or Captaine: to leave his ſtanding: to fly over to the Enemy: to betray the Hoaſt: to be diſobedient to his Captain, Coronell, or Lieutenant, to looſe or ſell his Armour, or to ſteale another mans: to be negligent in forage, or providing of victuall: to neglect his watch: to make a muteny, to fly firſt out of the field, or other like, which is delivered in the late cited titles. Concerning this *Arrian* who wrote the life of *Alexander* the great ſaith; *Every thing is counted an offence in a Souldier, which is done contrary to the common diſcipline; as to be negligent, to be ſtubborne, to be loathfull.*

The puniſhments wherewith Souldiers are corrected, are theſe, either corporall puniſhment, or a pecuniarie mulct, or injunction of ſome ſervice to be done, or a motion or removing out of their places, and ſending away with ſhame.

By capitall puniſhment is underſtood for the moſt part death, or at the leaſt beating, unleſs happily it be pardoned, either for the unskilfulneſs of the Souldier, or for the mutinie of the company, being thereto drawn by wine and wantonneſs, or for the miſeration or pittie of the party offending.

All which a wiſe Judge moderateth according to the qualitie of the perſon, the quantie of the offence, and the opportunity of the time.

SECT. 6.

That the third and laſt matter of extraordin Cogniſance in the Civill Law here with us, cerneth the bearing of Armes, and ranging every man in his proper place of honour : firſt of Armory.

THe laſt extraordinarie matter that the Ci Law Judge dealeth in, is the bearing of Ar and the ranging of every man in his roome of nour according as his place requires: and firſt of Armes. For skill in Armorie, althoug be a thing now almoſt proper to the Herauld Armes, who were in old time called *Feciales*, *Caduceatores*, becauſe they were meſſengers of w and peace; either to proclaime the one or nounce the other: yet the ground thereof we from the Civile Law, ſo that thereby to thi they may be directed in their skill or controle they doe amiſs.

C. ut nemo privatus pradiis ſuis vel alienis vela regia imponat, ut nemini liceat ſine Jud. author ſigna impone.

For beſides that there are many other place the law which touch armorie, as appeareth by titles here quoted in the margent, *Barthol.* hi maketh a ſpeciall tractate thereof, and divi the whole matter of Armes into three ranks acc ding to the divers ſorts of men that bare them: ſome are Armes of ſome publick dignitie and o as the Armes of the Legate, or Proconſull, Armes of Biſhops, the Armes of the Lord Admi other are Armes of ſpeciall dignities, as Armes

Ki

Kings and Princes, which no man is to beare or paint in his houſe or ſtuffe unleſs it be to ſhew his dutie or ſubjection thererein.

The third ſort is, of thoſe which are private mens Armes, of whom part have them by the grant of the Prince, or by authority of thoſe to whom the Prince hath given power to grant Armes to others, as hath the Earle Martiall within this Realm of England; others have taken them by their own which albeit in former times they might do, as alſo they might take ſuch names as every one did like of (for names and ſignes in the beginning were invented for to know and diſcerne one man from an other) and as every man might change his name, ſo might he change his ſigne, ſo that it were not done in fraude and deceit: but after it was forbidden: both that any man ſhould change his name, becauſe it was not thought it could be done with any good meaning, and that no man ſhall beare Armes of his own authoritie; and therefore Officers were appointed under Princes, (as I have ſaid) who ſhould give armes to ſuch as deſerved well of the common-wealth, either in warre or peace: for albeit in the beginning armes and colours were proper to men of warre, to avoid confuſion in the hoaſt, and to diſcerne one company from another, yet when it came to a matter of honour, it was challenged no leſs by men of peace, than by men of war; for true indeed is that ſaying of *Tully*, *Parva ſunt foris arma niſi eſt concilium domi*: and the Emperour ſpeaking of the benefit that Advocates, and ſuch like bring to States and Common-wealths, ſaith

C. de ſtatuis & imaginibus ut nemini liceat ſignum ſalvatoris, &c. De his qui potentiorum nomine titulos prædiis ſuis affigunt. & ibi doct.
ff. de rerum diviſio. l. ſanctum.
C. de ingenuis & manumiſſ. l. ad recognoſcendaff. de rerum diviſione l. ſanctum.
C. de mutatione nominis l. 1. ff. de Falſis l. falſi nominis.

L. Advocati C. de Advocatis diversorum judicorum.

saith thus, Advocates which breake the doubtfu
fates of causes, and with the strengh of their defen
sundry times, as well in publick causes as in privat
raise up those that are fallen, and relieve the
which are wearied, do no less good unto mankin
then if by warre and wounds they saved their p
rents and countrey: for we (saith he) do n
count that they onely do warre for our Empi
which do labour with sword, shield and targe
but also our Advocates, for indeed the Advocates
Patrons of causes do warre, who by confidence
their glorious voyce do defend the hope, life,
posteritie of such as be in danger: thus saith h
and thereupon commeth that distinction of *Castre
peculium*, *Et quasi castrense peculium*, signifyi
thereby, that albeit Councellours to the st
Lawyers, and such like be not actuall warriers,
they are representative warriers, and do no l
serve the Common-wealth then they. The So
dier riseth betime in the morning that he may g
forth to his exploit, the Advocate that he may p
vide for his Clients cause: he wakes by the tru
pet, the other by the Cock; he ordereth the bat
the other his Clients businesse; he taketh care
tents be not taken, the other that his Clients ca
be not overthrown: so then either of them i
warrier, the one abroad in the field, the other
home in the Citie. Besides *Barthol.* treateth in th
place what things are borne in Armes, either na
rall, as beasts, birds, fishes, mountaines, trees, flowe
sun, moon, starres, or such like: or artificiall
taken from things existent, as colours, simple a
mix

mixt, divided by halfes or quarters, or by lines direct, croſſe, or overtwart, or ſuch other: then how each of theſe are to be carryed, wherein Art muſt follow Nature, that every thing figured, be borne according to the nature of that which it doth figure, and not otherwiſe: and therefore as in enſignes, flagges, or ſtandards, the ſpeare or ſhaft goeth before, and the ſtreamer or colours follow after, ſo the face of every creature that is figured or deſcribed in the banner or hatchment, muſt look unto the ſhaft or ſpeare; unleſſe a man beare two creatures, one looking toward the other, for then this obſervation hath no place, for vaine it is to conjecture when things are certaine, otherwiſe it is the nature of the face to go before, and the body to follow after: and the like reaſon is of the parts of every creature which is likewiſe borne in Armor, which are diſtinguiſhed by before and behinde, whoſe ſight muſt be ſuch, that the head look to the ſpeare, otherwiſe would it ſeem to goe back like a Monſter: but if the forepart alone of any creature be borne in a Scucheon, as often it happeneth that men give onely a Lyon, Beare, or Buls head for their Armes, then muſt not the head directly look unto the ſhaft, but aſide: further, every of theſe creatures be ſo deſcribed in the coate, as his vigour and generoſity be beſt ſet out, whether it be a fierce or ſavage beaſt, or a milde and gentle creature. But for colours his rule is, that the nobleſt colour be put in the firſt part of the field, howſoever the coat be divided, quarter or pale. And of colours the golden colour be the chiefeſt, as that which doth ſi-

gure the Sunne, which is the fountaine of li
which is moſt acceptable to every mans eye. T
next is Purple or Red, which doth figure the f
that is the higeſt and nobleſt of the four Eleme
and next the ſunne it ſelfe in dignitie. The third
Blew, of the Heraulds called Azure, and *Cerule*
Latine, which figureth the Aire, which is a cl
and tranſparent body, and moſt capable of li
and cometh in nobility next after fire. The fou
is White, which cometh neer to Light, and th
fore is more noble than Black, that draweth nee
darkneſs, and therefore is the baſeſt of all colo
as every one hath more or leſſe of White or Bl
ſo either they are nobler or baſer in reputation
degree. And thus much in generall as concerning
knowledge of Armes.

SECT. 7.

Concerning the Places and Succeſſions of Prin and other honourable Perſonages; and firſt their Places.

NOw followeth what the Civile Law holde
as concerning Princes, and other honour
Perſons, and their ſucceſſions and places, whic
grave Judge of this Land hath anciently ackno
ledged to belong unto the Civile Law.

Nedham. 37.

Hen. 6. fol. 21.

By the Civile Law, all power cometh from G
as the Scripture teacheth, and among powers
two greateſt are the Empire and the Prieſthoo

for as God hath ordeined the one to rule the outward man, and to bring all his actions within the compaſſe of reaſon, and ſo to eſtabliſh common-wealths and to order the ſame: So alſo hath he provided the other for the inſtruction of the inward man, and the planting of Religion among men.

By the Empire, I underſtand not onely the Empire of *Rome*, (which ſometimes bare rule over moſt part of the world, at the leaſt ten mighty Kingdomes, which now are grown into particular Empires and Monarchies themſelves) but alſo every ſeverall Kingdome, which acknowledgeth no other Emperour than his ow Soveraigne; for howſoever they differ in name and title, yet is the office it ſelfe all one: For every one of them is Gods immediate Vicar upon earth in their own Kingdomes, for matters appertaining to Juſtice. Whereupon the Civile Law gives them very honourable titles, ſometimes tearming them Gods upon earth, for the great authority they have over other men under God; ſometimes Miniſters of God, for the ſervice they do God in their Common-wealths; ſometimes moſt holy and moſt religious, for the care they ought to have about Religion, and correcting of thoſe things which are done againſt the feare of God; for a King ought in all things to propound the Word of God before him for his rule, and to follow the doctrine of the Apoſtles; ſometimes they are called moſt milde, becauſe a King in all the courſe of his life, but ſpeccially in matters of puniſhment ought to imitate the Grace and ſavour of Almighty God.

ff. de leg. 2. l. ff. de legat. 2. l. C. 4. tit. 13. C. 1. tit. 3. l. 56. C. 1. tit. 1. l. 5. C. 1. tit. 1. l. 5. C. 5. tit. 4. l. 23.

L. fin. C. de ver. signif. c. de dignitat. l. 8. lib. 12.

Although the Emperour or King be reckon among his Nobilitie, because he should not bee p up with the glorie of his place, and conceive were of a more excellent mould then the rest, wh indeed we are all one, and the selfe same cl

1 Petri c. 2. ver. 13.

yet he is both by the ordinance of God and m ὡς ὑπερέχων (as the Apostle termes him) amo them, that is, one who is supreame Soveraigne bove the rest, and whom they ought in all things obey, so it be not against the Law of God, and co mon Justice; for himselfe is insteed of the wh Law, yea he is the Law it selfe, and the onely terpreter thereof, as in whose breast is the wh knowledge of the same; which albeit the Doc

A b c signific. via ext. de penitentiis, &c. C. 6. t. 23. l. 19. C. de testib. l. omnium.

do hold with a qualification, as thereby underst ding not onely the Princes person, but also Chancellours, both which put together, make up perfect state of a Prince: yet forasmuch as all t benefit of wisedome and government that com from them unto the Common-wealth, is princip derived from the Prince as from the head, who h vouchsafed to make them, as it were, members his body, and so by them to derive the power his government unto all; it may be rightly said th in the Princes breast reasteth the fullnes of knowledge, for the well ordering of his comm wealth; for what they see, they see for him, wh they heare they here for his use, what they unde stand, they understand to do him service, and consequently of the rest of the actions of the min and body, they obey the Prince as their So raigne: so then as the Prince hath the primacie

he government of his common-wealth, and all thoſe which governe under him, governe by, and or him; ſo alſo hath he the precedencie, and *pro-ocliſy*, or foreſitting in all aſſemblies before the eſt, and ſuch other as have precedencie or foreſit-ing, have it by the Princes indulgencie.

Next unto the Prince is his Queen, who ſhineth y the beams of her King, and hath the like prero- ative as himſelf hath. After them comes next in ace the the Kings Children, becauſe children in a ort are partakers of their Fathers dignity: but yet mong children there is a difference, that the male e preferr'd before the female, and among thoſe hich are males, the eldeſt have the preheminence n going, ſitting, ſpeaking, and other like mattor of eſpect. After the Kings Children follow in the ext rank Dukes, after them Marqueſſes, then Earls, ourthly Vicounts, and laſt Barons; all which have ignities either heritable, or granted by the boun- y of the Prince, whereupon their nobility is foun- ed, and whereby they onely and no other are to e accounted Peers of the Land. Among theſe, for ourteſy ſake, are reckoned ſuch as deſcend of No- le Houſes, every one according to his degree, un- ill the third generation: and the daughters of theſe reat Houſes, ſo long as they marrie to any that re in degree of Peers, retein their fathers dignity, ut if they marrie under the degree of Peers, then hey loſe their fathers place, and follow the degree f their husband; which notwithſtanding is in pra- ice otherwiſe heer among us, but without any warrant of Law. The like is of the Widowes of the Peers,

C. 7. tit. 37. l. 3. in princip.

L. 1. C. de dignitat. lib. 12.

L. Mulieres 13. C. de dignit. l. 12. c. de equestri dignitat. l. unic. lib. 12.

Peers, who while they live sole and unmarried, tein the nobility of their husbands; but if they ry, then they follow the condition of their se husbands, be it honourable or otherwise.

Cujacius lib. de Feudis.

Next in place after Peers come Knights, wh *Cujacius* following the moderne *French* Her maketh three sorts; one whereof hee calleth *valliers*, the other *Bannerets*, the third *Bac* but setteth down no proper difference of th from the other; and therefore I leave that t enquired of those, which shall be curious th

L. cum te. c. de Nuptiis.

Among the *Romans*, for ought that I have there was but one order of them, and they next in degree to the Senatours themselves, a us they are to the Peers.

Between Knight and Doctors of the Law, ever been question for precedencie, since eith them hath been in credit in Common-weals, a appear both by the comparison that *Tully* m between *Lucius Murena*, a Knight of Rome, *Publ. Sulpitius* a Lawyer, either of them sta for the Consulship, in his eloquent Oration for *Murena*, and many disputes of *Bartol* and *dus*, arguing the case to and fro, which althou be yet disputable in forrein Countries, when Civile Law is in credit; yet here among us w all preferment is taken from it, and the Profes thereof are shut up, as it were, into a narrow ner of their profession, it is without contro and the priority thereof indubitable; but yet is the resolution of those which are learned in point, that in such acts as concern learning, a

Chassaneus de gloria mundi lib. 9.

or is to bee preferred before a Knight, but in acts
at concern military knowledge, a Knight takes
ace before a Doctor: but in other acts which are
either proper to the one, nor to the other, firſt are
referred ſuch Doctors as attend about the Prince;
condly ſuch Knights as waite upon the Prince;
irdly ſuch Doctors as being not about the Prince,
re excellent in learning; fourthly come Knights
thout any place of preferment; laſtly Doctors of
eaner gifts and place.

Although by the Civile Law there be no Gentle-
n of title under Knights, but all the reſt went un-
r the name of people, yet in other common-
ealths there are, and with us bee, even in this rank,
hich have names of preheminence, whereby they
re in degree above the reſt; as with the French
here are *les Gentilhommes*, and *le Gens de ordinances*,
d with us are Squiers and Gentlemen, all which
re Enſignes or Coat-Armours, and thereby are
inguiſhed from the meaner people: in which re-
ect *Bartol* calleth them Noble, but yet of a weak
bility, for that it hath no further prerogative in
than that it makes them differ from the baſer ſort
people.

*Bartol tra-
ſtat. de In-
ſign.*

Of theſe two ſorts of Gentlemen with us, the
Squier hath the priority, * who ſeems by the com-
mon name wee give him in Latin, to have had his

* And ſo it might have ſeemed by the Engliſh name, for though we

now call this kinde of Gentlemen an Eſquier, yet our Anceſtors called ſuch a one *Scyld-cnapa*, a ſhield-knave, that was the knave (or as wee ſay now, the boy or ſervant) that uſed to bear a Shield or other Armour after his Maſter in the wars: and this is anſwerable to the Latin *Armiger*, & to the originall of the dignity; whereas the word Eſquier (which we now uſe) from the *French*, properley noteth another thing. *L. 1. c. de dignitat. lib. 10. & 12.*

Homer. Il.
Plin. l. 35. natur. hiſt.

his origen, either for that hee carried the Arm
of the King, Duke, or other great perſonage,
wee ſee not onely in holy Scriptures *Saul* and
nathan had their Armour-bearers; but in Po
and other prophane ſtories, *Patroclus* was *Ach*
Armour-bearer, and *Clitus* great *Alexanders*: whe
upon ſome write that ὁπλίτης *ſive* ὁπλόφορος, whi
is he whom we call *Armiger* in Latin, is a foo
man, that with a ſpear, ſhield, or head piece, f
loweth an armed Knight in battaile, or rather
ſome other ſuppoſe, it is the footman himſelf arm
in the field: howſoever the word be taken, this
ſure, that theſe were men of good account in t
old time, as thoſe which won themſelves cred
out of warre, and ſo their eſtimation remained
their poſterity; and as thoſe were in time befo
ſo are theſe which are in our dayes, as deſcendi
for the moſt part, from their worthy Anceſtours.

There is no dubbing or creating of theſe by
Princes hand, or him to whom the Prince hath
ven authority, as it is in the creating of the No
litie, and the making of Knights, but every o
whom the Captain hath vouchſafed that ſervice,
by the ſervice it ſelf a Squier; and that not o
ly hee which hath done the ſervice in warre, b
alſo ſuch which have done any equivalent ſervi
in peace, as Lieutenants, and Sherifes of Shires,
Juſtices of Peace within their County: for even
this, as in other Promotions hath that diſtinctio
of the Law place, of *Caſtrenſis peculii*, & q
caſtrenſis, whereby ſervice of the Common-wea
at home, is levelled and made equall with that
broa

oad. Gentlemen have their beginning either of lood, as that they are borne of worſhipfull parents, r that they have done ſome thing worthily in ace or warre, whereby they deſerve to bear rmes, and to bee accounted Gentlemen, for hee a Gentleman who is commonly ſo taken and re-nted.

And this is the laſt and loweſt order of them to hom Law doth allow any challenge of preceden-ie.

SECT. 8.

Concerning the Succeſſion of great Perſonages in their places of Honour.

NOw it followeth, that I ſpeak ſomething al-ſo, how great perſonages one ſucceed an ther in their places of honour.

And firſt, to begin with the Empire it ſelf, as the reateſt earthly dignitie under God, albeit in the eginning it were raiſed up by no right, but by u-rpation, *Julius Cæſar* changing the former go-ernment of the State, and challenging to himſelf he whole managing of the ſame; yet after it came o an orderly courſe, inſomuch as hee that had the reſent poſſeſſion of it, diſpoſed it to his beſt liking y his laſt Will and Teſtament. So *Julius* himſelf eviſed it to *Octavius* his ſiſters ſon: and albeit hat deviſe took not effect, by reaſon of the treaſon hat was wrought againſt *Julius* his own perſon, ſo hat *Octavius* was fain to recover it by an other

right

right, even by the death of *Lepidus* and *Ant* his colleagues in office; yet that very Will of *J* gave a pretence to *Octavius*, who after was *Augustus* (because hee did increase the Empire many worthy Victories) to stand for the in tance of the Empire; in consideration of which the Senate and people of *Rome* more easily sub ted themselves unto his government. *Augus* like sort bequeathed it to *Tiberius*, and *Tiberi Cajus*: and so it came from one to an other, some of them by cruelty and licentiousnesse of became so odious to God and man, that the pe rose against them, and bereft them of that lib which they had prescribed in appointing their Successors, and somewhiles themsel and somewhiles the Souldiers made c of whom they thought good, or by w they thought best to be rewarded. And the right of Succession unto the Empire, toss up and down many hundred years betwi heritance, Bequest, and Election, untill at the l came unto that established state, as now it is in, fetled Electours of the Empire, so often as it pened to be voide. Succession in Kingdomes, most part of the world, in former time hath b and at this day is by right of bloud, (a few o excepted, which are Elective, as the Kingdo *Poland* is at this day) and in Succession the e Sonne taketh place before the rest; and if the no heir male, then the eldest daughter succeede the Kingdome, and her issue: for Kingdomes also succession in other dignities) are impart

nd yet *France* (to exclude *Edward* the third from e inheritance of the Crowne thereof, who deſcen- d of *Iſabel* the ſiſter of *Charles* the fair, and ſo was eſt heire male unto the Kingdome of *France*) al- ged for themſelves the Law *Salick*, pretending ne which claimed by the woman, albeit he were next heire male in blood, was to ſucceed, as g as there were of the male line alive, how farre ver they were off in degree from the laſt King de- ed. But this is but a meer device of the *French*, ented upon ſome rotten Record of that part of r Nation, called *Salii*; of whom otherwiſe y have nothing memorable to ſpeak of, as being baſeſt Nation among them all, of whom they re- t their people to have bin compounded: but this ſe ſerved their turne then, whether it were an- tly invented, or newly coyned. But howſoever y oppoſe themſelves againſt womens govern- nt, as *Bodine* their countrey-man hath of late tched our the ſtrength of his wit to deviſe rea- s againſt the government of that ſexe: certain it , that the Law of God hath allowed it, as it ap- eth in the example of *Debora*, who being a Pro- eſſe, governed Iſrael fortie years, and by her ection got the Iſraelites a mighty victory over ra the Captain of the hoaſt of *Jabin*: and wee ong other Nation, have found by experience, aiocracy or womens government is nothing ſo fortunate, as *Bodine* would make us beleeve it is. r both in our late Queen, and alſo in her ſiſter, xcept only the caſe of Religion, wherein ſhe fol- wed the error of the time, and was carried away more

Bodin. lib. 6. de repub.

more with zeal then knowledge, and thereby more to be pitied then to be envied) what in their government, the wiſeſt Man-Prince in the world would not deſire to be in his own Re ment? for what is either in their private carria (ſo you give no eare to virulent and maliti tongues, who report ſurmiſes for ſubſtances, tales for truths) or in their publicke governme (ſo you lay not other mens faults to their charg that any man may juſtly blame? For that I paſſe over the reſt of their Heroicall vertues, fi women of their State (ſpecially the late Queen, was peerleſſe among all Queens that ever went fore her, and unmatchable, as I verily doe believe any that ever ſhall ſucceed her) as their magnani ty whereby they ſubdued, not only their dom call enemies, but vanquiſhed even their forrain were their deſignements never ſo dangerous, ſhewing any token of diſcouragement, either in treaſonable attempts of the one, or in the maliti complotments of the other.

What an excellent work of hers was that, then when all her neighbour Kingdomes round bout here drunk with the cup of the fornicatio the whore of *Babylon*, ſhe alone came out of *B lon*, and ſo continued conſtant to the end, ma the threats of the red fiery Dragon, and the flo of water he caſt out of his mouth after her? H excellent did ſhe ſhew her ſelf in thoſe two vert which doe chiefly preſerve Princes States, tha Mercy and Judgement, the Records of her doe ſhew, ſo that I may ſpare to remember any

na

ame, which happily would not be well taken.

And yet, truth it is, that mens government is ore agreeable to Nature, then womens is, whom God in the beginning put in ſubjection under man, nd who for the moſt part are by nature weak in ody, and thereby unable to put in execution the reat affairs of a Kingdome, and unſetled in Judge-ent, and ſo hardly can determine that which is ght, and ſettle themſelves thereupon: yet by the meration of certain ill governing Queens, to con-ude a generality againſt all government of women, but an ill kind of arguing; for even by the like rea-n a man might conclude againſt Kings, of which rt, although there hath been many good, whom od hath uſed as inſtruments to worke great good o people in every Kingdome, yet more of them ve been evill, as the Stories of every country will ew; and to abridge God of his power, that hee not as well governe by a woman as by a man, hen it is his good pleaſure ſo to doe, were great jury to God, and a great diſcredit to all woman nd: but to return thither where I left.

n ſucceſſion of Kings a queſtion hath been, here the King hath had ſons both before hee me to the Kingdome and after, which of em is to ſucceed, hee that was born be-re the Kingdome, as having the prerogative of birthright, or he that was born after, as being ought into the world under a greater planet then e other; neither hath there wanted reaſon or ex-ple for each ſide to found themſelves on: for *Xer-* the ſon of *Darius* King of *Perſia* being the eldeſt

Herodot. lib. 4. Juſtin. lib. 11. Plutarchus in vita Artaxerxis.

birth after his father was enthronized in the K
dome, carried away the Empire thereof from
brother *Artemines* or *Artobazanes* born before
father came to the royall possession thereof: so
Seces the son of another *Darius* born in the time
his fathers Empire carried away the garland fr
his brother *Cyrus* born before the Empire: so L
Duke of *Millan* born after his father was Duke,
preferred to the Dukedome, before his brother G
liasius born before the Dukedome. But these ex
ples notwithstanding, and the opinion of so
Doctors to the contrary, common use of succe
in these latter dayes hath gone to the contrary,
that not without good reason: for that it is
meet, that any that have right to any succession
the prerogative of their birth-right (such as
der brethren have) should be despoiled there
cept there be some evident cause of incapacity
the contrary.

Guicciard. l. 1. Histor. Blondus Decad. 2. lib. 6. Mich. Ritius l. 2. de regib. Hungar. Sigeb. in Cronic.

Bartol. l. si vivâ matre c. de bonis maternis primogeniti filii non excludunt secundogenitũ in regno ff. de liberis & posthumis l. in suis.

Besides, sundry contentions have risen in k
domes between the issue of the eldest Sonne of
King, dying before his father, and the second b
ther surviving the father, who should reign after
father, the Nephew callenging the same unto h
by the title of his fathers birth-right, and so by
way of representation; for the eldest Son, even
father yet living, bears the person of the father, b
much then rather his father being dead? Wh
upon the Law cals as well the Son *Filius fami*
as the father *Paterfamilias*, for that the Sonne,
during the fathers life, is as it were Lord of h
thers state: the other claiming as eldest Son to
fath

father at the time of death; upon which title, in old time there grew a controverſy between *Areus* the ſon of *Acrotatus*, eldeſt ſon to *Cleomines*, King of *Lacedæmon*, and *Cleomines* ſecond ſon to *Cleomines*, and uncle to the ſaid *Areus*, but after debate thereof, the Senate gave their ſentence for *Areus* right, againſt *Cleomines*: beſides *Eunomus* King of *Lacedæmon* having two ſons, *Polydectes* and *Lycurgus*, *Polydectes* dying without children, *Lycurgus* ſucceeded in the kingdome, but after that he underſtood *Polydectes* widow had a childe, he yeilded the Crown to him: wherein he dealt farre more religiouſly than either did King *John*, who upon like pretence, not onely put by *Arthur Plantaginet* his eldeſt brothers ſon, from the ſucceſſion of the kingdome, but alſo, moſt unnaturally, took away his life from him; or King *Richard* the third, who moſt barbarouſly, to come unto the kingdome, did not onely ſlay his two innocent Nephewes, but alſo defamed his own mother, in publiſhing to the world, that the late King his brother, was a baſtard. Our Stories doe not obſcurely note, that a controverſy of like matter, had like to have grown between *Richard* the ſecond and *John* of *Gaunt* his uncle, and that he had procured the counſell of ſundry great learned men to this purpoſe, but that hee found the hearts of ſundry Noble-men of the Land, (and ſpecially the Citizens of *London*) to be againſt him; whereupon hee deſiſted from his purpoſe, and acknowledged his Nephewes right. Yet notwithſtanding, when as *Charles* the ſecond King of *Sicile* departed this life, and left behinde him a Nephew of *Charles*

Parſanias lib. 3. Hiſtor.

Plutarch in vita Lycurg.

Vicerius in vita Hen. 7

his eldeſt ſon, furnamed *Martellus*, and his youn
ſon *Robert*, and the matter came in queſtion wh
of them ſhould ſucceed, *Clement* the fifth gave
tence for *Robert* the younger ſon of *Charles* dec
ſed, againſt the ſon of *Martellus*, being Nephew
his Grandfather, and ſo cauſed the ſaid *Robert*
bee proclaimed King of *Sicile*; which was done
ther upon diſpleaſure, that Pope *Clement* concei
againſt the Emperour *Frederick*, then that th
was juſt cauſe ſo to doe. And yet *Glanvill*, an old
verent Lawyer of this Land, and Lord chief Juſ
under *Henry* the ſecond, ſeemeth to make this q
ſtionable here in England, who ſhould be prefer
the Uncle or the Nephew.

Clem. c. paſtoralis de re judicata.

Glanvil l. 7. c. 3.

And thus much of ſucceſſion of Kings, whe
the eldeſt among Males hath the prerogative,
the like in Females, if there be no Male: for th
Kingdome is a dignity undiviſible, and can co
but to one, be hee Male or Female; for that oth
wiſe great governments would ſoon come to ſm
Rules and Territories.

And the like that is ſaid of Kingdomes, is to
held of all Dignities under Kingdomes, where
eldeſt ſon is to be preferred before all his other b
thren, and they ſucceſſively one before an other,
there be no iſſue left of them that goe before;
the Male line is to be preferred before the Fe
nine, and the Feminine before all the reſt of
kinred, ſo it be not a Maſculine Feud, and the ſa
intailed upon the heir Male.

And thus farre, as concerning the matters wh
in the Civile Law dealeth directly or incide
with

within this Realme. Now it followeth, to ſhew how much of all thoſe Titles of the Canon Law, which have been before ſet down, are here in practice among us.

CHAP. II.

SECT. 1.

Concerning the uſe which the Canon Law hath in this Realm: That ſome Titles thereof are abloliſhed onely individually, and ſome other are altogether.

OF thoſe Titles of the Canon Law, which before have been recited, ſome are out of uſe here with us in the ſingular or *Individuum*, by reaſon of the groſſe Idolatry they did conſiſt in them; as the Title of the Authority and uſe of the Pal, the Title of the Maſſe, the Title of Reliques and the worſhip of Saints, the Title of Monks and Regular Canons, the Title of the keeping of the Euchariſt and Cream, and ſuch other of like quality: but yet are reteined in the generall: for in ſtead of them, there are ſubſtituted in their places holy worſhips, tending to the like end of godlineſſe thoſe other did pretend, but void of thoſe ſuperſtitious meanes the other thought to pleaſe God by; and ſo in ſtead of the Maſſe, hath come in the holy Communion; and in place of worſhipping of Saints, hath ſucceeded a godly remembrance, and glorifying of

God in his Saints, and ſo of the reſt, whereof t
is any right uſe within the Church.

Some other are out of uſe as well among the
vile as Criminall titles, becauſe the matter th
therein treated of, is known notoriouſly to be
to the conuſance of the Common Law at this d
as the Titles of Buying and Selling, of Leaſing, L
ting, and taking to Farme, of Morgaging, and Pl
ing, of Giving by deed of gift, of Detecting of C
luſion and Coſenage, of Murder, of Theft, and
ceiving of Theeves, and ſuch like.

SECT. 2.

*That the Titles laſtly mentioned, did anciently b
unto the Court Spirituall, and the reaſons
moved the Author ſo to believe: The firſt Reaſ*

AND yet, I doubt not; but even theſe m
as well Civile as Criminall, or moſt of t
were anciently in practiſe, and allowed in B
Courts in this Land, among Clerks, to the wh
am induced by three Reaſon: Firſt, that I fin
onely the forrein Authours of the Decretals, b
ſo the domeſticall Authours of the Legatines,
all moſt excellent wiſe men, as the Stories of
ſeverall ages do report to have enacted theſe ſ
conſtitutions, and to have inſerted them, not
in the holy body of the Canon Law, but alſo
body of the Eccleſiaſticall Lawes of this Land
that ſome wiſe men, ſundry years after their
doe write and comment upon the ſame, as t

pedient and profitable for the uſe of the Church, nd the government of the Clergie in thoſe dayes; ither of which, I doe preſume, they would have one, if in thoſe ages there had not been good uſe d free practice of them.

SECT. 3.

The ſecond Reaſon.

Econdly, that I finde in the Code of *Juſtinian*, by ſundry Lawes, ſome of his own making, ſome hers of other Emperours before his time, even om the dayes of *Conſtantine* the great, Biſhops in ir Epiſcopall audience had the practice of theſe ters, as well Criminall as Civile; and to that end d they their Officials or Chancellours, whom the w calleth *Eccleſiecdici*, or *Epiſcoporum Ecdici*, t is, *Church-Lawyers*, or *Biſhops-Lawyers*, men ed up in the Civile and Canon Law of thoſe , to direct them in matters of Judgement, as well Eccleſiaſticall Criminall matters, as Eccleſiaſticall ile matters.

And that theſe which now are Biſhops Chancel- , are the very ſelf ſame perſons in Office, that ently exerciſed Eccleſiaſticall Juriſdiction un- Biſhops, and were called *Eccleſiecdici*, it may ear by that which *Papias*, an old ancient Hiſto- apher cited by *Gotbofred*, in his Annotations the foreſaid Law *Omnem* in the Code, and title *Epiſcopis* and *Clericis*, and upon the §. *Praterea*, eth of them, who ſaith thus, That *Eccleſiecdici*

or *Ecdici* were those that were aiders and assi
to the Bishops, in their Jurisdictions, not astrict
bound to one place, but every where through
whole Dioceſſe, ſupplying the abſence of the Bish
which is the very right deſcription of the Bish
Chancellours that now are; who for that they c
ry the Bishops authority with them every whe
for matters of Juriſdiction, and that the B.
they make but one Conſiſtory, are called the
ſhops Vicars generall, both in reſpect their aut
rity ſtretcheth it ſelf throughout the whole D
ceſſe, and alſo to diſtinguiſh them from the Co
miſſaries of Biſhops, whoſe authority is only
ſome certain place of the Dioceſſe, and ſome c
tain cauſes of the Juriſdiction, limited unto th
by the Biſhops, and therefore are called by the L
Judices or *Officiales foranei*, as if you would
Officiales aſtricti cuidam foro dioeceſeos tantùm.

Gloſſ. in Clement. 2. de Reſcrip.

Baldus l. aliquando ff. de officio Proconſulis.

Covar. li. 3. variarum reſolut. c. 10 num. 4.

Shrozius lib. 1. de vicariis Epiſ. q. 46. num. 2. 4. 12. & 13.

So that it is a very meer conceit, that a ce
Gentleman, very learned and eloquent of late
written, That Chancellours are men but of late
ſtart in the world, and that the ſloth of Biſhops
brought in Chancellours, whereas in very de
Chancellours are equall, or neer equall in time
Biſhops themſelves, as both the Law it ſelf, and S
ries doe ſhew: yea Chancellours are ſo neceſſ
Officiers to Biſhops, that every Biſhop muſt of
ceſſity have a Chancellour; and if any Biſhop wo
ſeem to be ſo compleat within himſelf, as tha
need not a Chancellour, yet may the Archbi
of the Province wherin he is, compell him to t
a Chancellour, or if he refuſe ſo to doe, put a Ch
cellou

ellour on him: for that the Law doth preſume, is a matter of more weight than one man is able o ſuſtaine to governe a whole Dioceſſe by him- ſelf alone; and therefore howſoever the nomi- nation of the Chancellour be in the Biſhop, yet his uthority comes from the Law, and therefore he is o leſſe accounted an Ordinarie by Law, than he Biſhop is. But truth it is, not the ſloth of iſhops, but the multitude and varietie of Ec- leſiaſticall cauſes brought them in, which could ot be defined by like former precedents, but eeded every one almoſt a new deciſion. And he reaſons why Princes in the beginning granted o Clergie-men theſe cauſes and their Conſiſtories; (for from Princes were derived in the beginning ll theſe authorities, as alſo the Religion it ſelfe s ſetled and protected in Kingdomes by Princes, be- ore there can be had a free paſſage thereof) were. irſt that Clergie-men thereby might not be drawn rom their prayer and exerciſe of divine ſervice, o follow matters, of ſuits abroad. Secondly, that hey were like to have a more ſpeedy and better diſpatch, and more indifferency before a Judge of their own learning, than before a Judge of another profeſſion; for this is true, and ever hath been, and I feare ever will be unto the end, that is ſaid in the Gloſſe, and is in common ſaw, *Laici opido ſemper infeſti ſunt Clericis:* Laſtly, the Clerks ſuits and quarrels ſhould not be divulged and ſpread abroad among the Lay people, and that many times to the great diſcredit of the whole profeſſion, ſpecially in criminall matters, wherein Princes anciently ſo much

Hoſtienſis in ſumuſa de officio Vicarii numero 2. in fine nominationem ab Epiſc. poteſtatem vero à jure recipiunt.

much tendered the Clergie, that if any man am
them had committed any thing worthy of death,
open ſhame, he was not firſt executed, or pu
publick diſgrace, before he was degraded by
Biſhop, and his Clergie, and ſo was exec
and put to ſhame, not as a Clerk, but as a l
malefactor; which regard towards Eccleſiaſti
men, it were well it were ſtill reteined, both
cauſe the conſideration thereof is reverent,
worthy the dignity of the Miniſtrie, whoſe offi
moſt honourable, and alſo for that it is more a
ent then any Papiſticall immunity is.

SECT. 4.

The third and laſt Reaſon.

THe third reaſon that moves me to believe, t
theſe Titles ſometimes were here in exerci
mong us in Eccleſiaſticall Courts, is, that I
Glanvill, who himſelfe lived under *Henry* the
cond, and was Lord chief Juſtice of England in
ſort to the Eccleſiaſticall Courts, the plea of Te
ments, where the ſuit is between two Clerks, or
tween a Clerk and a Lay man, and the plea is,
*libera eleemoſina feodi Eccleſiaſtici, & non pe
inde recognitio*, whether the frank fee be lay or
cleſiaſticall: where alſo is further added, that
be found by the verdict of legall and ſufficient m
that it is Eccleſiaſticall fee, it ſhall not hereafter
drawn to Lay fee, no though it be held of
Church, by ſervices thereunto due and accuſtom
ſecond

Glanvill l. 12. cap. 15. de Legibus Anglia.

Idem lib. 13. cap. 25.

Secondly, whereas land is demanded in marriage by the husband or the wife, or their heire, and the demand be againſt the giver, or his heire, then it ſhall be at the choice of the demander, whether he will ſue for the ſame in the court Chriſtian, or in the Secular Court: For ſaith he, it pertaineth to the Eccleſiaſticall Courts to hold plea of dowries, which he calleth *Maritagia*, if ſo be the plaintif ſo make choice of thoſe Courts, for the mutuall affiance that is there made between the man, and the wife, for marriage to be had between them, and there is a dowry promiſed unto the man by the womans friends, neither ſhall this plea be carried unto the temporall Courts, no though the lands be of Lay fee, ſo that it be certaine the ſuit is for a Dowry, but if the ſuit be againſt a ſtranger, it is otherwiſe: Againe the Kings prohibition ſo biding the Clergie the dealing in many things which are of Lay fee, forbids them no one thing that is of Eccleſiaſticall fee, and to ſhew the Princes meaning preciſely therein, that it was not his intent by that Prohibition to reſtrain the Eccleſiaſticall Judges for proceeding in matters of Eccleſiaſticall fee, he ſets down in very termes theſe words (Recogniſances touching Lay fee) as though he would hereby ſignifie to all men, that he would not touch matters of Eccleſiaſticall fee, which did then wholy and properly appertaine to the triall of the Chriſtian Court, as hath been before vouched out of *Glanvill*; who for the place he then held, may be thought to have known the Lawes of England, as then they ſtood, and the right interpretation thereof, as well as any man then, or now

Idem lib. 7. cap. 18.

Anno 24. Ed. 1.

now living. And yet becauſe there were ſome thi
of Lay fee, which the Clergie then had cogniz
of, and as yet have in ſome meaſure; as cauſes,
matters of money chattels, and debt, riſing ou
Teſtaments, or Matrimonie, becauſe he would h
whatſoever belonged to the Clergie to be undo
ted, excepteth them from thoſe things which b
long to the Crown and dignity, and leaveth th
to the ordering of the Chriſtian Courts; which
nothing elſe but an affirmance of that which *Gl*
vill and the reſt of the ancient Engliſh Lawy
Bracton and *Britton* ſaid before.

Adde hereunto the provinciall Conſtitut
Æterne de pœnis, made in the dayes of *Henry*
third, which plainly ſhewes, that in thoſe dayes
perſonall ſuits between either Clerk and Clerk,
between Lay-men complaynants, and Clerkes
fendants (for ever the Plaintife muſt follow
Court of the Defendant, which to the Eccleſiaſti
men then was the Eccleſiaſticall Court) were tr
by the Spirituall Law, and not by the Tempo
Law: which practice for that it doth accord wi
the judgement of thoſe ancient Lawyers that h
been before cited, and with the Prohibition it ſ
which there reſtraineth onely calling of Lay men
make recogniſances of matters of Lay fee; it may b
a great argument, that theſe things were of t
Eccleſiaſticall right in thoſe dayes: from which I ſ
not how the Eccleſiaſticall Courts are fallen, for
ſee neither Law, nor ſtatute to the contrary, un
perhaps they will ſay the Statute of the 25.
Henry 8. *cap.* 19. took the ſame away, as bei
hurtfu

25. *H.* 8. *cap.* 19.

hurtfull to the Kings Prerogative royall, and repugnant to the Lawes, Statutes and Customes of this Realme; which whether they be, or be not taken away by the stroake of that Statute, I leave it to men of better experience in these matters than my selfe to judge.

But yet this I find by experience to be true, That where there are two divers jurisdictions in one Common-wealth, unlesse they be carefully bounded by the Prince and an equall respect carried to both of them, so farre as their places, and the necessary use of them in the Common-wealth requires, as the advancement of the one increaseth, so the practice of the other decreaseth, especially if one hath got the countenance of the State more than the other; which is the onely cause at this day of the overflowing of the one, and the ebbing of the other, but it is in his Sacred Majestie to redress it not by taking any thing from that profession that is theirs, but the restoring to this profession, that which is their own: but hereof σὺν θεῷ.

SECT. 5.

That some titles of the Canon Law are granted to be of absolute use with us, and that of some other there is question made.

FOr the rest of the matters that belong to the tryall of the Ecclesiasticall Courts, some are acknowledged to be absolutely in use, some others are challenged to be but in a certaine measure in use.

In

In abſolute uſe are thoſe which never had
oppoſition againſt them, which almoſt are th
alone which belong to the Biſhops degree or ord
for all things which come within the compaſſ
the Eccleſiaſticall Law, are either belonging to t
Biſhops degree, or his juriſdiction: To his de
or order belong the ordering of Miniſters and De
cons, the confirmation of Children the dedicat
of Churches and Churchyards, and ſuch like, n
of which have been challenged at any time to b
long to any other Law. The ſecond ſort is of th
that belong to the Biſhops juriſdiction, which
partly voluntary, partly litigious: Voluntarie
when thoſe with whom the dealing is, ſtand
againſt it; but litigious it is when it is oppu
by the one part or the other; of this latter
many things in ſundry ages have been called in
ſtion, but yet reſcued and recovered againe by
wiſe and grave Judges themſelves, who have fo
the Challenge of them to be unjuſt. But what d
belong to either of them in private, or what c
do appertaine to the whole Juriſdiction in gene
becauſe they have been already particularly
down by that famous man of worthy me
Coſin in his Apologie *part.* 1. *c.* 2. *Doctor Coſin*, in his learned Apologie for cer
proceedings in Eccleſiaſticall Courts; I will
make a new catalogue of them, but ſend the R
der for the knowledge thereof unto his Book; b
yet in my paſſage will I note, which of them h
been moſt chiefly oppugned, and as occaſion
fall out ſpeak of them.

PAR

PART. III.

CHAP. I.

SECT. 1.

How the Juriſdiction which is of Civill and Eccleſiaſticall cogniſance, is impeached by the Common Law of this Land: and firſt of the impeachment thereof by the Statute of Præmunire facias.

AND thus much as concerning thoſe parts of the Eccleſiaſticall Law, which are here in uſe with us: Now it followeth, to ſhew whereby the exerciſe of that Juriſdiction which is granted to be of the Civile and Eccleſiaſticall cogniſance, is defeated and impeached by the Common Law of this Land, which is the third part of this diviſion.

The impeachment thereof is by one of theſe names by *Præmunire*, by *Prohibition*, by *Injunction*, by *Superſedeas*, by *Indicavit*, or *Quare impedit*: but becauſe the foure laſt are nothing ſo frequent, nor ſo harmfull as the others, and that this book would grow into a huge volume, if I ſhould proſecute them all, I will onely treat of the firſt, and paſſe over the reſt unto ſome better opportunity.

What is a *Præmunire*

A *Præmunire* therefore is a writ awarded out of the Kings Bench, againſt one who hath procured out

out any Bull, or like proces of the Pope from Rome or elſe-where, for any Eccleſiaſticall place, preferment within this Realme; or doth ſue in forreine Eccleſiaſticall Court to defeat or impeach any Judgement given into the Kings Court, whereby the Body of the offendor is to be impriſoned during the Kings pleaſure, his goods forfeited, and his Lands ſeiſed into the Kings hand, ſo long as the offender liveth.

25. *Ed.* 2. 27. *Ed.* 3. c. 1. 38. *Ed.* 3. c. 1. & 2. 7. *Rich.* 2. *cap.* 2. 13. *Rich.* 2. c. 2. 2. *H.* 4. c. 3.

This writ was much in uſe during the time the Biſhop of *Rome's* authority was in credit in this land, and very neceſſary it was it ſhould be ſo, it being then two like principall authorities acknowledged within this land the Spirituall in the Pope and the Temporall in the King; the Spirituall grew on ſo faſt on the Temporall, that it was to be feared (had not * theſe Statutes been provided to reſtraine the Popes enterpriſes) the ſpirituall Juriſ-

* Nevertheleſſe even out of theſe Statutes, have our Profeſſors of the Common Law wrought many dangers to the Juriſdiction Eccleſiaſticall, threatning the puniſhment conteined in the Statute Ann. 27. *Edw.* 3. & 38. *ejusdem* almoſt to every thing that the Court Chriſtian dealeth in, pretending all things dealt within thoſe Courts, to be the diſheriſon of the Crown (from the which and none other fountaine, all Eccleſiaſticall Juriſdiction is now derived) whereas in truth Sir *Thomas Smith* ſaith very rightly and charitably, that the uniting of the ſupremacie Eccleſiaſticall and Temporall in the King, utterly voideth the uſe of all thoſe Statutes: (*Nam ceſſante ratione, ceſſat lex*) and whatſoever is now wrought or threatned againſt the Juriſdiction Eccleſiaſticall, is but in emulation of one Court to another, and conſequent a derogation of that authority from which all Juriſdiction is now derived, and the maintenance whereof was by thoſe Statutes eſpecially purpoſed. D. *Cowel* in the Interpreter.

diction

diction had devoured up the temporall, as the temporall now on the contrary ſide hath almoſt ſwallowed up the ſpirituall. But ſince the forrein authority in ſpirituall matters is aboliſhed, and either Juriſdiction is to be agniſed to be ſetled wholy, and onely in the Prince of this Land, ſundry wiſe mens opinion is, there can lie no *Præmunire* by thoſe Statutes at this day, againſt any man exerciſing any ſubordinate Juriſdiction under the King, whether the ſame be in the Kings name, or in his name who hath it immediately from the King: for that now all Juriſdiction, whether it be Temporall or Eccleſiaſticall is the Kings, aud ſuch Eccleſiaſticall Lawes as now are in force are the Kings Eccleſiaſticall Lawes, and the Kings Eccleſiaſticall Courts; for that the King cannot have in himſelfe a contrarietie of Juriſdiction fighting one againſt another, as it was in the caſe between himſelfe and the Pope, although he may have diverſity of Juriſdiction within himſelfe, which for order ſake, and for avoyding of Confuſion in governement he may reſtraine to certaine ſeverall kindes of cauſes, and inflict puniſhment upon thoſe that go beyond the bounds or limits that are preſcribed them: but to take them as enemies, or underminers of his ſtate, he cannot; for the queſtion here is not, who is head of the cauſe, or Juriſdiction in controverſie, but who is to hold plea thereof, or exerciſe the Juriſdiction under that head, the Eccleſiaſticall or Temporall Jndge, Neither is that to move any man that the Statutes made in former times againſt ſuch Proviſors, which vexed the King and people of this

land with ſuch unjuſt ſuits, do not onely provide againſt ſuch proceſs as came from *Rome*, but againſt all others that came elſewhere, being like conditioned as they: for that it was not the meaning of thoſe Statutes, or any of them, thereby to tax the Biſhops Courts, or any Conſiſtorie within this land; for that none of them ever uſed ſuch malepert ſaucineſſe againſt the King, as to call the Judgements of his Courts into queſtion, although they were farre in ſtrayning upon thoſe things and cauſes which were held to be of the Kings temporall cognisance, as may appeare by the Kings prohibitions thereon framed, And beſide the Arch-biſhops Biſhops and other Prelates of this Land, in the greateſt heat of all this buſineſs, being then preſent in the Parliament with the reſt of the Nobility diſavowed the Popes inſolencie toward the King in this behalfe; and aſſured him that they would and ought to ſtand with his Majeſtie againſt the Pope in theſe and all other caſes touching his Crown and Regalitie as they were bound by their allegiance: ſo that they being not guilty of theſe enterpriſes againſt the King, but in as great a meaſure troubled in their own juriſdiction by the Pope, as the King himſelfe was in the right of his Crown, as may appeare out of the courſe of the ſaid *Statutes. The word (*Elſewhere*) can in no right ſence be underſtood of them, or in their Conſiſtories: although ſome of late time thinking all is good ſervice to the Realme, that is done for the advancement of the Common Law, and depreſſing of the Civile Law, have ſo interpreted it, but without ground

Et leſtat. eſt (in Curia Romana vel alibi) le quel (alibi) eſt à entender en la Court l' Eueſque iſſint qne ſi hõme ſoit ſue la pur choſe que appent al Commen ley il aura Pamunire. Fitzherb. Nat. Bre. Tit. Præmunire facias.

ground or warrant of the Statutes themſelves, who wholly make proviſion againſt forreine authority, and ſpeak no word of domeſticall proceedings. But the ſame word (*Elſewhere*) is to be meant and conceived of the places of remove the Popes uſed in thoſe dayes, being ſomtimes at *Rome* in *Italy*, ſomtimes at *Avignion* in *France*, ſometimes in other places, as by the date of the Bulls, and other proceſſe of that age may be ſeen; which ſeverall removes of his gave occaſion to the Parliament of inſerting the word (*Elſewhere,*) in the body of thoſe Statutes, that thereby the Statutes providing againſt Proceſſe dated at *Rome*, they might be eluded by like Proceſſe dated at *Avignion*, or any other place of the Popes abode, and ſo the penalty thereof towards the offendor might become void and be fruſtrated. Neither did the Lawes of this Land at any time whiles the Popes authority was in his greateſt pride within this Realm, ever impute a *Præmunire* to any Spirituall Subject, dealing in any Temperall matter, by any ordinary power within the Land, but reſtrained them by Prohibitiou oneły; as it is plaine by the Kings Prohibition, wherein are the greateſt matters that ever the Clergie attempted by ordinary, and domeſticall authority, and yet are refuted onely by Prohibition. But when as certaine buſie-headed fellowes were not content to preſſe upon the Kings Regall juriſdiction at home, but would ſeek for meanes, for preferment, for forrain authority, to controule the Judgements given in the Kings Courts by proceſſe from the Pope; then were *Præmunires* decreed,

both to puniſh thoſe audacious enterpriſes of the factious Subjects and alſo to check the Popes ſolencie, that he ſhould not venter heareafter enterprize ſuch deſignments againſt the King people. But now, ſince the feare thereof is paſt, reaſon all entercourſe is taken away between Kings good Subjects and the Court of *Rome*, not to be thought the meaning of good and ciſull Princes of this Land is that the cauſe of Statutes being taken away the effect thereof ſho remain; and that good and dutifull Subjects ping happily awry in the exereiſe of ſome par their Juriſdiction, (but yet without prejudice the Prince, or his Regall power) ſhall be puni with like rigour of Law, as thoſe which were lesters, grievers, and diſquieters of the whole c But yet notwithſtanding the edge of thoſe *Pr nires* which were then framed, remaine ſharpe unblunted ſtill againſt Priests, Jeſuits, and other Runnagates, which being content with their n naturall Princes government, ſeek to bring in a that and like forreine authoritie, which thoſe tutes made proviſion againſt; but theſe thing leave to the reverend Judges of the Land, and thers that are skilfull in that profeſſion, onely wi ing that ſome which have moſt inſight into th matters, would adde ſome light unto them, t men might not ſtumble at them, and fall into danger of them unawars: but, now to Prohi tions.

not

SEC

SECT. 2.

The impeachment thereof by Prohibition and what it is.

A Prohibition is a commandement ſent out of ſome of the Kings higher Courts of Records, where prohibitions have been uſed to be granted in the Kings name, ſealed with the ſeale of that Court, and ſubſcribed with the Teſt of the chiefe Judge, or Juſtice of the Court, from whence the ſaid prohibition doth come at the ſuggeſtion of the Plaintif, pretending himſelfe to be grieved by ſome Eccleſiaſticall or marine Judge, in not admittance of ſome matter, or doing ſome other thing againſt his right, in his or their judiciall proceedings, commanding the ſaid Eccleſiaſticall or marine Judge to proceed no further in that cauſe: and if they have ſent out any cenſure Eccleſiaſticall or Marine againſt the Plaintif, they recall it, and looſe him from the ſame, under paine of the Kings high indignation, upon pretence that the ſame cauſe doth not belong to the Eccleſiaſticall or Marine Judge, but is of the temporall cogniſance, and doth appertaine to the Crown and dignitie.

Of Prohibitions, ſome are Prohibitions of Law, ſome other are Prohibitions of fact.

Prohibitions of Law, are thoſe which are ſet down by any Law or Statute of this Land, whereby Eccleſiaſticall Courts are interdicted to deale in the matters therein contained, ſuch as are all thoſe things which are expreſſed in the Kings Prohibition as are alſo thoſe which are mentioned

What are Prohibitions of Law

by the ſecond of *Edward* the ſixth were Judges
the Eccleſiaſticall are forbid to hold plea of
matter contrary to the effect, intent, or meaning
the Statute of *W.* 2. *Capite* 3. The Statute of *A*
ticuli Cleri, *Circumſpecte agatis*, *Sylva Cædua*,
treaties *De Regia Prohibitione*, the Statute *Anno*
Edwardi 3. *Capite* 10. or ought elſe wherein
Kings Court ought to have Juriſdiction.

Prohibitions of fact, are ſuch which have
preciſe word, or letter of Law, or Statute for
as have the other, but are raiſed up by argume
out of the wit of the Deviſor. Theſe for the
part are meer quirks and ſubtilties of law,
therefore ought to have no more favour in
wiſe, honourable, or well ordered Conſiſtorie,
the equity of the cauſe it ſelfe doth deſerve;
ſuch manner of ſhifts (for the moſt part) b
nought elſe but matter of vexation, and have
other commendable end in them, though
pretend the right of the Kings Court, as thoſe
Prohibitions of the Law do: but the Kings
is not to be ſuppoſed by imagination, but is to
made plaine by demonſtration, and ſo both
Statute of the 18. of *Edward* the third *capite* 5.
where it is provided, that no Prohibition ſhall
out, but where the King hath the cogniſance,
of right ought to have; and alſo by the forena
Statute of *Edward* the ſixth, which forbids
any Prohibition ſhall be granted out, but up
ſight of the libel, and other warie circumſtance
the ſaid Statute expreſſed: by which it is to be
tended the meaning of the Law-givers was

that every idle ſuggeſtion of every Attourney ſhould breed a Prohibition, but ſuch onely ſhould be granted as the Judge in his wiſdome ſhould think worthy of that favour, and if right and equitie did deſerve it: although (as I muſt needs confeſſe) the Statute is defective in this behalfe, for to exact any ſuch preciſe examination of him in theſe caſes, as it is alſo in other points, and is almoſt the generall imperfection of all Statutes, that are made upon Eccleſiaſticall cauſes: but I feare me as emulation between the two Lawes, in the beginning, brought in theſe multitudes of Prohibitions, either againſt or beſide law, ſo the gaine they bring unto the Temporall Courts maintaineth them: which alſo makes the Judges they ceſſe not coſts and damages in caſes of conſultation, (although the Statute preciſely requires their aſſent and aſſignement therein) becauſe they would not deterre other men from ſuing out of Prohibitions, and purſuing of the ſame.

The Prohibitions of the law, as have been before ſhewed are either many or much repined at becauſe they containe a neceſſary diſtinction between Juriſdiction and Juriſdiction, and imply the Kings right, and ſubjects benefit: but the Prohibitions of fact or of men, are both infinite and odious for that there is, well nigh, no matter either Civile or Eccleſiaſticall, be it never ſo cleer or abſolute, but they clog and incumber it with ſome Prohibition; and the matter they containe is (for the moſt part abſurd and frivolous as ſhall firſt appeare in marine cauſes, and after in Eccleſiaſticall matters.

SECT. 3.

SECT. 3.

Concerning the common Lawyers action of Trover and what is meant in the Law by a Fiction, to shew how the Civile Jurisdiction is impeached in matters of Admiraltie.

FOr Marine causes it is well known, that all bargaines and contracts, as are made by persons either in any forraine country, or any haven or creek of the Sea, or any shore thereof, farre as the greatest winter wave doth run out, upon any great river, to the first bridge next the Sea, for any merchandize, ship, tackle, or other negotiation belonging to the Sea, or to any merchandize brought from beyond the Sea, is, ought to be of the admirall cognizance, and so ever more hath been since the Court of the Admiralty was first erected: and yet the common Lawyers (to defeate the Civil: Law of the triall thereof) have devised sundry actions, and among the rest, an action of Trover, whereby they feine that a ship arrived in *Cheapside*, or some other like place within the Citie, and there the Plaintif and Defendant meeting together, bargained upon some merchandize, or other like seafaring matter, by which fiction, they pretend the bargaine now is to be tryed in the Common Law, and not by the Civile Law, as being done in the body of a Countie, and not upon the maine Sea, or any other place subject to the Admirall jurisdiction.

But that this fiction, or any other like qualitied to this, ſhould have any ſuch force, as to work any effect in Law. I will ſhew, firſt by the definition of a fiction, then by thoſe things that are neceſſarily attendant thereon.

A fiction therefore is defined by *Bartol* (whom alſo the reſt of the Doctors doe follow) to be an aſſumption of the Law upon an untruth, for a truth, in a certain thing poſſible to be done, and yet not done: upon which fiction the Doctors hold, there make two things, the one is Equity, the other Poſſibility. For Firſt, unleſſe there be cauſe why, that which is not, ſhould be fained to be, and that which is, ſhould bee accounted not to be, and that which is done in one ſort, or at one time, or in one place, ſhould be imagined to be done in an other ſort, at an other time, and in an other place, there is no reaſon a fiction ſhould be admitted: for the Law alloweth no man to come to extraordinary remedies, but where ordinary remedies fail: and therefore if that which is in controverſy may bee obtained by any other meanes, than by a fiction, a fiction is not to be afforded: but if ordinary meanes cannot be had, then fictions may be entertained to ſupply the defect of the ordinary means, that thereby, although the truth be otherwiſe, yet the effect of the Law may be all one.

L. ſi is qui pro emptore §. 3. ff. de uſucapionib. & ibi Bartol.

L. in cauſa. ff. de minorib.

So then, the Law faineth an infant not yet born, to bee born for his benefit, for that happely without that fiction, the poor infant ſhould be remedileſſe of his Filiall Portion, Legacie, or other right in conſcience due unto him; ſo Nephewes and Neeces ſuc-

L. qui in utero & penult. de ſtatu hominū ff.

succeed together with their Uncles and Aunts their Grandfathers and Grandmothers goods, such portion as should have come to their parents if they had lived; for that the Law presumeth that to represent the person of their parents: so he that is dead, is fained to bee alive to many constructions in Law, specially if many of his equals in age be live, at the time that he is fained to bee alive: so that is alive, and is in captivity, (for the upholding of his Will which he made in liberty) is fained bee dead the houre before hee became captive: he that is obstinate, and will not appear in Judgment, being lawfully called thereto, is fained to present, that neither himself should take benefit of his obstinacy, neither his adversary hurt by absence and injury. Infinite more examples might be brought of this sort, but it would be too long to run through them all, and this shall suffice to have shewed, that the Law approveth fictions, where there is equity for it, and the Law it self otherwise cannot have her effect. And as the Law cannot proceed to a fiction without equity, so neither can it fain any thing that is impossible, for it evermore followeth Nature; and therefore if a man would fain disproportionable things such as the Painter did in *Horace*, who made Boares wallow in the waves of the Sea, and Dolphins wander in the woods; these fictions in no sence can be admitted for that they are such, as neither Nature nor Reason can brook. In like sort, if a man would fain

L. 1. §. si filius ff. de suis & legit. l. 2. l. 3. l. 4. C. eod. l. Gallus 29. §. & benè & §. videndum ff. de liberis & posthumis. §. cùm filius Instit. de hæred. an ante nato. L. veris est §. ult. ff. pro socio. L. actione §. publicatione ff. eod. L. absentem. ff. de verborum significat. L. lege Cornel. ff. de testamento. L. Gallus §. si ejus ff. de liberis & posthumis. l. si pater §. si cum. ff. de adopt.

Horat. de Arte poëtica. 21. 22. 23. & sequentib.

Bartol l. si is qui pro emptore

o live, who were dead two hundred years ſince, o that it were not poſſible that hee or any of his quals ſhould live at that age; this would not hold Law, for that it is above the age that the Law oth preſume any man may live by Nature; al-hough the Law doth preſume ſuch as dye in warre or defence of their countrey (for the better encou-agement of thoſe that are alive, to venture them-lves in like ſervice for the common-wealth) to ve for ever; becauſe their fame doth flouriſh for ver: and upon like reaſon the Law will not ſuffer ny perſon to adopt an other for his childe, who either elder or equall in age unto himſelf, or is ot ſo farre under his years, as by courſe of Na-ure hee might be his naturall childe indeed: ſo uch the Law deteſteth impoſſibilities, that it will ot ſuffer a man to fain that which in common ence and Nature might not be true indeed.

Now, if theſe things be true, as in all reaſon and ew, by former precedents they appear to be true, would gladly ſee how actions of Trover, whereby he Common Lawyers tranſlate unto themſelves atters of Marine triall) if they be ſquared to theſe ules of Fictions, can bee maintained: for firſt to peak of equity, which the Law requires in theſe anner of proceedings, what equity can it be to ake away the triall of ſuch buſineſſe as belongeth o one Court, and to pull it to an other Court; pecially, when as the Court from whence it is rawn, is more fit for it, both in reſpect of the ful-neſſe of knowledge that that Court hath to deal in ſuch

ſuch buſineſſe, and alſo of the competency of
that is in the Judges and Profeſſours of
Courts, correſpondent to theſe cauſes, more
is in the Judges and Profeſſors of the other Co
for the deciding and determining of theſe ma
For, albeit otherwiſe they are very wiſe and
cient men in the underſtanding of their own pro
ſion, yet have they ſmall skill or knowledge in
ters pertaining to the Civile profeſſion: for
there is nothing written in their Books of
matters, more than is to be gathered out of a
Statutes of former time, whoſe drift was no
open any door unto them, to enter upon the
mirall profeſſion, but to preſerve the Kings J
diction from the Admirall incroachment, as
by the ſaid Statutes appear; whereas contra
the Civile Law hath ſundry titles included in
body thereof, concerning theſe kindes of cau
whereupon the Interpreters of the Law have la
ly commented, and others have made ſeverall T
ſtates thereof: So that, by all likelihood, theſe
are more fit and better furniſhed to deal in this b
ſineſſe, than any man of any other profeſſion, as
ving; beſides the ſtrength of their own wit, o
mens helpes and labours to rely upon.

Beſides, this buſineſſe many times concerns
only our own countrey-men, but alſo ſtrange
who are parties to the ſuit, who are born, and d
live in countries ordered by the Civile Law, whe
by they may bee preſumed to have more skill a
better liking of that Law, than they can b
though

hought to have of our Lawes, and our procee-
ings: and therefore it were no indifferency to
all them from the triall of that Law, which they,
ſome part know, and is the Law of their coun-
rey (as it is almoſt to all Chriſtendome beſides)
o the triall of a Law which they know in no part,
nd is meer forrain unto them; ſpecially when the
rinces of this Land have anciently allowed the Ci-
ile Law to be a Common Law, in theſe cauſes, as
ell to their own ſubjects, as it is to ſtrangers.

Further, the avocating away of cauſes in this
ort from one Juriſdiction to another, ſpecially
hen the cauſe hath long depended in the Court
om whence it is called, inſomuch as now it is
eady for ſentence, or rather is paſt ſentence, and
ands at execution, cannot be but great injury to
he ſubject after ſo much labour loſt, and money
ent in waſte, to begin his ſuit anew again: which
s like to *Syſiphus* puniſhment, who, when he hath
ith all his might, forced his ſtone up to the top
f the hill, and ſo is (as himſelf hopes) at an end of
is labour; yet the ſtone rowles down again on
im, and ſo his ſecond labour (his ſtrength being
ent with the toyle of the firſt) is more grievous
han the former was: which being ſemblably true
n a poor Clyent, who hath his cauſe in hearing,
here can be no equity in this fiction, whereby a
auſe ſo neer ended, ſhould again be put upon the
Anvill, as though it were ſtill rough work and new
to be begun.

And ſurely, as there is no equity in it, ſo there
is no poſſibility ſuch a fiction ſhould be maintained

by

by Law; for that it hath no ground of reaſon
reſt his feet on. For if this be granted, that ſuch
fiction by Law may be made, then one of theſe
ſurdities muſt needs follow, either that a ſhip
arive in a place where no water is to carry it, or
that it arive according to the fiction, either
people, their houſes and their wealth ſhall be
overwhelmed in the water, as the world was
Noahs Flood, and *Ducalions* Deluge, and ſo no body
there ſhall be left alive to make any bargain or con-
tract with the Mariners and Shipmen that arive
there; or that the people that dwell there ſhall walk
upon the water, as people doe on land, which Pe-
ter himſelf was not able to doe, but had ſunck, if
Chriſt had not reacht his hand unto him, and there-
fore far leſſe poſſibile for any other man to doe. So
that it may bee well ſaid (theſe things ſtanding as
they doe) no ſuch fiction can hold, and that no
action can be framed upon it; for as there is no Ob-
bligation of impoſſible things, ſo there is no Action
of things that neither Nature nor Reaſon will af-
ford to be done: neither is it to the purpoſe that
the maintainers of theſe actions doe ſay, that in this
caſe, the place where the contract is made is not
conſiderable, which I take to be farre otherwiſe
for that, when that themſelves will convey a Mat-
cauſe from the Sea unto the Land; they will ſay
to bee done in ſome ſpeciall place of a Country, and
the place never ſo unproper for ſuch an action: So
that the foundation of theſe actions, is the place
where they were done, as namely that they were
done in the body of ſuch a Country, or ſuch

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ountry, and not upon the main Sea, or beneath
e loweſt bridge, that is upon any great river next
e Sea. And therefore in two emulous Juriſdi-
ions, when they are ſo divided, as that one is aſſi-
ed the ſea, the other the land, the place of the
tion can in no ſort be ſuppreſſed, and another
pplyed in the room thereof: *Quod enim una via*
hibetur, alia via non eſt permittenda, & quod
hibitum eſt directo prohibetur etiam per obliquum:
e if this were granted, then matter enough would
e offered to one Juriſdiction to devour up the
her, and the Law would be eaſily eluded: which,
reſtrain either of theſe Juriſdictions to their
n place, and to provide that one in his greatneſſe
e not ſwell up againſt the other, hath ſet either
them their bounds and limits which they ſhall
t paſſe: which, as it is the good proviſion of the
aw, ſo ought either Juriſdiction in all obedience
ſubmit it ſelf thereunto, for that the diminiſhing
either of them is a wrong to the Prince from
om they are derived, who is no leſſe Lord of the
a, then hee is King of the Land: and therefore,
no ſort, ſuch liberty muſt be allowed to the one
ectly or indirectly, as that it ſhould be a ſpoil
o the other; which would eaſily come to paſſe,
hen as the Law alloweth not any man to ſue a
ine matter by the ordinary courſe of the Lawes
this Land, yet a man will follow it by an extra-
inary. But where there is an uniformity of
iſdiction, as that it is all by ſea and all by land,
re may a thing be fained to be done in one place,
at was done in another place, without any mans

pre-

prejudice, for that in this caſe the place is not t
verſable (ſo it bee not in Criminall matters wh
time and place is required, that the accuſer doe
wander from place to place with the injury of
accuſer) for howſoever the place and the actio
altered, yet the truth of the cauſe remaineth
and the ſelf ſame ſtill. And ſo farre as concer
actions of Trover in Admirall cauſes: Now it d
follow, that I ſhould ſpeak of like prejudices t
grow to the ſame by actions of Treſpaſſe, but t
will I paſſe over, for that in ſo ſmall a Treati
this is, I cannot goe over all: and therefore w
onely put the Reader in minde, that there are m
deviſes, riſing out of the Common Law than
that infeſt the Admiralty. But now to Wils
Teſtaments wherein they are impeached.

SECT. 4.

Concerning Wils and Teſtaments, wherein they are i
peached.

FOr matters of Wils and Legacies, they ar
proper to the triall of the Eccleſiaſticall Law
this Realm, that the profeſſors of the Com
Law themſelves, doe oftentimes confeſſe and
they have no more to doe therewith, than the C
lian hath to do with the knowledge of the mat
of Franktenement: and yet even theſe matter
Teſtaments and Legacies, althoough Prohibitions
not ſo frequent in them, as they are in the re

Ecc

Eccleſiaſticall cauſes, yet they are not quite voide of them, and that in ſome points, wherein the very life and eſſence of a Will doth ſtand.

For whereas the ancient *Romans*, knowing how ſubject matters of Wils are to forgery and corruption on the one ſide, and ſuppreſſion and concealment on the other ſide, to meet with all craft and ſubtilty whatſoever, which might ſeize on them, did moſt carefully provide, that there ſhould be ſeven witneſſes, at the leaſt, preſent at the making of every Will and Teſtament, except it were in time of ſome generall plague or ſickneſſe, when ſo many witneſſes could not conveniently be had together, for fear of infection, or that it were in the Country, where there are but a ſmall multitude of people. And that thoſe witneſſes ſhould be particularly required to that purpoſe, with diverſe other obſervations & circumſtances tending all to the ſafe and ſure making thereof; which the Eccleſiaſticall Law altered afterward in ſundry points, for that many true Wils were many times overthrown for want of thoſe preciſe ſolemnities. It therefore reduced the whole number of thoſe ſeven witneſſes, unto two onely, agreeably to the Law of God, and the Law of Nations, where that number of witneſſes is allowed, as competent to prove any matter, ſo that the ſame witneſſes be honeſt and credible perſons, ſuch whoſe faith is not doubted of. The common Lawyers, becauſe themſelves in ſundry matters very dangerouſly many times admit one witneſſe, and give him full credit, and that in matters of great weight and importance, (as though all ſhould bee ſquared to

their rule, and framed to their compasse) if an Eccl
siasticall Judge in the probate of a Will, contrary
the rules of his own Law, will not admit the te
mony of one witnesse, they forthwith fling ou
Prohibition against him, as though he had done
offence against the Crown and dignity, in that
doth not allow those number of witnesses in
Probate of a Will, that the Common Lawes of
land allow almost in every matter.

For answer to which, if I should alleage the p
cise forme of the Ecclesiasticall Law, which to
essence of a Will requireth this number of two w
nesses, or else holdeth it not for a Will (but in c
inter liberos, *& ad pios usus*, where the onely
of the Father or Testator without witnesses ser
for a Will, so the same beknown to be the Te
tors own hand, or so proved by comparison)
would think to wise men I had said sufficiently;
I will not rest hereupon, but will convince the
selves, by themselves: for, doe they, I pray yo
their own proceedings, where a Law or Statute
quires more witnesses than one, content themsel
with one witnesse alone; yea, doe they not in
cases where a certain number of witnesses are
pointed to prove a fact by Law or Statute, fur
the cause with so many witnesses as the case de
or else doe they not account the proceeding voi
And will they think themselves so precisely bo
to the keeping of the letter of the Common La
and will they not suffer the Civilian in like man
to cleave fast to the observation of the Civile La
especially when it hath the consent of the Law
God

God, and the Law of Nations, and is his Majeſties Eccleſiaſticall Law of this Land, aſwell as the other is his Temporall Law of the ſame?

I confeſſe it may be true many times, which one man ſaith, ſpecially when there concurre therewith many great and violent preſumptions, and the party that reporteth it is of good credit; but dangerous is to open this gap to the malice of men, for even ſo, many things ſhall be obtruded to the Judge for truth, which are ſtarke lyes; and many things ſhall be pretended to bee gold in ſhew, which in proof and practiſe will be found to be no other thing, but meer droſſe. And therefore well decreed the Emperour *Conſtantine*, that no one mans teſtimony ſhould bee heard, though he were never ſo great a man in Court. *L. juris jurandi. §. Simili C. de Teſtibus.*

But perhaps ſome man will ſay, If credit ſhall not begiven oftentimes to one mans teſtimony, much wickedneſſe will paſſe away unpuniſhed: For reply to which I anſwer, It is better to let a bad man eſcape, than to puniſh a good; and although it be true, if a man may excuſe himſelf by deniall, no man will be found guilty; ſo alſo it is true on the other ſide, if it be enough to condemnation to be charged by one man alone, without any other witneſſes, no man ſhall bee innocent; and therefore the admittance of one witneſſe in cauſes, and the proceeding thereupon to judgement is very dangerours.

An other like barre to this they lay againſt Eccleſiaſticall proceedings in matters of Teſtament; whereas an Eccleſiaſticall Judge proveth a Will, wherein are Mannors, Lands, Tenements, and other

like Hereditaments bequeathed, challenging this
ſo to be of the Crown and dignity, as though
Eccleſiaſticall Judge thereby took upon him to
cree which lands were deviſable by Will, and wh
not, or would by his probate adde a ſtrength u
the Will, to make the deviſe good or bad, whe
on the contrary part, the Eccleſiaſticall Judge
this act doth only teſtify, that ſuch a perſon m
ſuch a Will, and that the ſame was proved be
himſelf under his Teſte, for his laſt Will and Te
ment: but for the validity of the Will it ſelf,
the Legacies and deviſes therein, whether they w
of lands or tenements, or of goods or chattels,
Probate it ſelf worketh nothing, but leaveth
to the Law, Common or Eccleſiaſticall, accor
as the bequeſt belongeth to either of them, whe
it be good and vailable in Law, or no: for it o
times falleth out, notwithſtanding the Will
lawfully proved before the Ordinary, yet the
queſts are not good, either in reſpect of the pe
to whom the bequeſts are made, or in reſpect of
thing that is not deviſable in all, or in part; a
the Common Law, lands in *Capite* cannot be
viſed, more then for two parts, but in Socage
deviſe is good for all; and by the Cuſtome of
City of *London*, and ſome other places of the Lan
a man can bequeath no more then his deaths par
and if hee doe, his bequeſt is void for the reſt; b
in other places of the land a man may bequeath a
By the Civile Law a man can bequeath nothing
a Traytor, or an Heretick, or an unlawfull Co
ledge, or Company (unleſſe perhaps it be for th
alimen

ment, or maintenance of them in extream pover-
that they die not for hunger, which is the work
charity) and if he doe, the legacie thereof is void
all intents and purpoſes. So then, the Probate
the Ordinary in matters of land, neither helpeth,
hindereth the right of the deviſe it ſelf, but is a
claration onely of the dead mans doom uttered
ore ſuch and ſuch witneſſes: which taketh his
ength not ſo much from the Probate, as from
Law, and is teſtified onely by the Probate, that
ſame was declared by the Teſtator, in the pre-
ce of the witneſſes therein named, to be his true
laſt Will. So that no man herein is to be offen-
with the Ordinary, as preſuming of a matter
appertaining unto him, (for his teſtification in
Law and conſcience doth belong unto him, to
allowance ſo farre unto the defuncts Will, as
avouched before him to be his laſt act and deed
that behalf) but rather they are in this caſe to
k the Ordinary, that he by that act of his hath
ſerved the memory of that, which otherwiſe
haps would have been loſt and periſhed, to the
at hurt of the Common-wealth, and others
ich have private intereſt therein.

CHAP. II.

SECT. I.

Of the Care that Princes of this Realm have had the due payment of Tythes unto the Church, and preserving of the cognisance thereof unto the Ecclesiasticall Courts of this Land; both before the Conquest and since.

OF all matters that appertain to the Ecclesiasticall Courts, there is no one thing that the Princes of this Land have made more carefull provision for, since there was any Church government in this Land, than that all manner of Tythes due by the word of God should bee fully and truely paid unto their Parish Churches where they grew; & if they were denied, should be recovered by the Law of the Church. *For first before the Conquest, King *Æthelstane* made a Law, that every man should pay his Tythes to God, in manner as *Jacob* did, who made a vow to God, If God would bring him back again to his Country, hee would

* The great piety and Princely care of our ancient Kings before the Conquest is worthily noted by the Author, and because it argues the rare devotion of those times, we will consider it more perfectly. About the 7th Centurie *Ina* King of the West Saxons made this Law: Cÿꝛic ſceaꝛꝛaſ ſẏn aȝiꝼene be ðeinꝛ maꝛꝛẏneſ mæſſ[illegible] Giꝼ hpa þ ne ȝelæſꝛe. ſẏ he ſcẏloiȝ ꝼeoꝑeꝛꝛiȝ ſcill. [illegible] ꝛꝑelꝼꝼealðum aȝẏꝼe þone cyꝛicſeaꝛ: that is, That the Church sceat be paid in at *Martlemas*, if any refuse to pay it, that his penalty be fortie shillings, and the payment of Church-sceat twelve times

That which the Law here calleth Church-sceat, according to the varietie of reading, hath been diversly interpreted. *Fleta* as if it were cẏrıcsæð, readeth Church-seed, and therefore he saith, it was *Certa mensura bladi Tritici, &c.* So the old Lawyer in *Lambert. fuit un certein de ble batu que chescun homme devoit en temps des Briton & des Engles porter à lour Eglese le jour S. Martin.* Others read Cẏrıcsceat, Church-scet; that is the Church-shot, or Church due, Which way soever we read the word, there will be no great injurie done to the sence; yet because other things besides Corne have gone under the name of Church-seat (as the Cocks and Henns at *Christmas*) therefore seemeth that the last reading is the best: here it must signifie a quantitie of Corne due to the Church, and to be paid in at *Martlemas*: Why these dues and others were tendred at this Feast, *Hospinian* thinketh he hath given a good reason, but see *Gretser* in his book *de Festis* upon S. *Martins* day.

In the ninth Centurie King *Æthelstane* made this Law. Ic Æþel stane cẏnıng mıð geþeahte pulfhelmes mınes hehbısceopes ꝛoþra mınra bısceopa bebeoðe eallum mınum geneafum ðurh ealle mıne pıce on þæs drıh tænes nama ⁊ ealra halgena ⁊ for mıne lufu þ hı ærost mınes agenes æhtes ðam teoþe gesẏllaþ geðæs lıbbendes ẏrfes ge ðes gearlıces pestmes: that is, I *Æthelstane* King, by the advice of *Walfhelme* my Archbishop, and my other Bishops, command all my Reves through all my Kingdome in the Lords name, and of all Saints; and for my love that in the first place they pay the Tyth of my own reveneus, as well in living Cattle as the yearly frutes: ⁊ þæs sıe to ðæm dæg þær beheafdunges Seınt Johones þæs fulhtenes: that is, And this to be done at the day of the beheading of S. *John* the Baptist. And that the Subject might the more earnestly intent the observation of this Law, the King addeth a pious exhortation: Vtan geþencan pe þæt Iacob se hıehfæder to þam drıhten cpæþ, ıc ðe ille gesllan mıne teoþan, ⁊ mıne sıblac And drıhten seolfe ondam godspel cpæþ Eallum ðæm hæbbendum mon sceal agẏfan ⁊ hı genẏhtsumıaþ pe moton eac þæs ðencan ðe egeslıc on ðıssum bocum ıs geprıten Gıf pe

ure

ure teoðan geſyllan nyllaþ uſ ða nygon dælaſ biþ æt
dene ⁊ ſe teoþa an uſ biþ to laſ de godcunde lare
gemynaþ þ pe ða heoſonlica ðinga mid ðam eorþlic
⁊ ða ecelic mid ðam hpilpendicum geearmiaþ : that is, F
thermore, think we with Our ſelves what *Iacob* the High Fathe
the Lord ſaid : I will give thee my Tythe and my peace offering.
the Lord himſelfe in the Goſpel ſaith, To all that have, it ſhall be
ven and they ſhall abound. We might alſo bethink our ſelves of
penalty which is writren in this Book, that if we will not pay
Tythes, then the nine parts ſhall be taken away, and the tenth o
ſhall be left us. And gods Lore putteth us in minde, that for th
earthly things eternall are to be had, and everlaſting for the tr
torie.

Thus the religious Prince goes on, and earneſtly purſues the ar
ment in the Rhetorick of thoſe times , ſeeming to intimate to
people, that though no humane Law had interpoſed it ſelfe, yet
divine equitie of this cauſe might be eminently enforced out of ſac
Writ.

King *Edmund* in a Synod holden at *London* at which was pre
Oda ⁊ pulfſtan Ærcebiſceop ⁊ mænige oþre Biſceop
Oda and *Wulfſtan* Archbiſhops and many other Biſhops; made this
for holy Church: teoþungum ſe bebehodaþ ælcum criſten
men be hiſ criſtendome ⁊ cyricſceat ⁊ ælmeſſfeoh: G
hit hpa don nylle ſy he amanſumod : that is, We command
Chriſtian men by their Chriſtianitie to pay Tythes, Church ſceat,
Almesfee, if any refuſe to do it let him be accurſed.

Concerning the ælmeſſfeoh mentioned in the Law , it was th
Almes-money which was called the peterpence , for when Ina th
Weſt Saxon King went in pilgrimage to *Rome*, he made it a Law
his Subjects, that every houſe ſhould pay a pennie to the Pope,
this was to be tendred at Saint *Peters* tide, as appeareth by *Edg*
Law num 4. And ſy ælc heorþ pening agyfen be Pet
meſſe dag, &c. See alſo the Laws of *Cnute* and *Edward* th
Confeſſour.

And whereas we finde the curſe of Excommunication here ann
ed by the Law to this Sacriledge of which holding the Tenth,

without a parallel: for amongſt thoſe ſolemne execrations which a councell held here at *Oxford*, were to be openly pronounced ſeverall times in every yeare, we find theſe Church-robbers twice ded with *Anathema*. In the firſt Article thus: All they been urſed the rightys of holy Chyrch, as in the Londys tents t, poſſeſſions, marycs, leſouys, paſtoys ways, Paths we-gly, and unyuſtly, oy malyciouſly defoulen and with-holden ncelen huydeu oy to with-hold oy to aboyde procuren, the 26. *Article* in this manner Alſo all they ben accurſed re and leſſe whiche wytingly, wylfully, or malyciouſly, unwyſly, foy ony man hath had uttirly the Servants of d, that is to ſay, their Perſones, Vicars, Chapelyns, Pa-chialys whatſoeber condycyon they been oy fame the ths, proventys, profyts, oblations of cuſtome and conſue-e uſed laſſe or more with-holden oy done to be with-hol-n, oy the ſayd tythis oy oblatyons changen or turnen into er uſe than it was provided in the holy Chyrch law. of this ſee more *Cap.* 3. *Sect.* 2.

In the Laws of King *Edgar*, it was decreed in the firſt place, ꝺoꝛeꝛ cyꝑican ꝛyꝛi ꝑihteꝛ ꝑiꝑꝺe ⁊ man aȝyꝛe ylce ælc eoꝺunȝe toꝺam ealꝺan minſtre ꝺe ꝛeo hyneꝛꝛe tohyꝑꝺ: that Gods Church ſhould have all her rights, & that every man ſhould pay his Tythes to the Elder Minſter (or Mother-Church) where he heareth the Word. *cap.* 2. of *Edgars* Laws: See alſo the 3. & 4. *Chap.*

In the Laws of King *Cnute cap.* 8. thus it is, ⁊ ȝelæꝛte man ꝺoꝺeꝛ ȝeꝑihtæȝhpilce ȝeaꝛe ꝑihtlice ȝeoꝑne ꝺæt iꝛ ꝛul-ælmeſſe ꝛiꝛtene niht oꝑeꝑ eaꝛtꝺan ⁊ ȝeȝoꝺe teoꝺunȝe e Pentecoſten ⁊ eoꝑꝺ ꝺæꝛtma be ealꝺa halȝena mæſſan ⁊ ȝiꝛ hꝑa ꝺonne ꝺa teoꝺunȝe ȝelæꝛtan nælle ꝛꝑa ꝺe ȝecꝺe-an habbaꝺ ꝺ iꝛ ꝛe teoꝺa æceꝑ eal ꝛꝑa ꝛe ꝛulh hit ȝeȝaꝺ ome ꝛaꝑe to ꝺæꝛ cyninȝeꝛ ȝeneꝛa ⁊ ꝺaꝛ biꝛcoꝺaꝛ ꝺæꝛ land ꝑican ⁊ ꝺæꝛ myneꝛtneꝛ mæſſe ꝑꝑeoꝛt uman unꝺanceꝛ ꝺenne teoꝺan ðæl ꝺam myneꝛtep ꝺe hit

to

to gebiſnige ⁊ teacan him to þam nigoþum dæle ; ⁊ dæle man þa eahta dælaſ on tþa ⁊ ſo ſelandhlaſoſ healfum ⁊ to healfam ſe biſcop ſy hit cyninges ma hit þegneſ : That a man muſt be carefull rightly to pay rights every yeare, towit the Plough-almes 15. nights after and the Tyth of the young Cattle by *Witſontide*, and the fruits Earth by *Alhalgentide*. And if there be any that will not p Tenth, ſo as we have ſaid, that is the tenth Acre according to the of his plough, then the Kings Reve and the Biſhops, and his tha the Land, together with the Maſſe-prieſt of the Minſter may take away the tenth part whether he will or no, and give it Minſter whereunto it belongeth; The ninth part he may ta himſelfe; as for the eight parts let them be divided in two, a halfe go to the Land-lord, and halfe to the Biſhop, whether it be of the Kings men, or a Thane.

Concerning the Plow-almes, for which the *Saxon* ſaith ſulhælm *Lombard* ſaith thus : *Ego me legiſſe memini in vetuſtiſſimo quodam Ethelred Regis libello impoſitum tunc temporis in ſingula aratra de unum &c.*

when he returned home, pay Tythes to God of that God ſhould give him : the like did K *Edgar*, and King *Edmund*, commanding that th which willfully refuſed to pay their Tythes, ſho be excommunicated.

Hovenden part. 2. cap. De Decimis Eccleſiæ.

William the *Conquerour* (as *Roger Hovenden* porteth) in the 4. yeare after his conqueſt, hav ſome time of reſt from war, and ſetling of rebelli ſpirits, who kicked at his goverment at home, tred into a conſideration of the well ordering of Church and Common-wealth, by wholſo Lawes : and therefore by the adviſe of his Co cell he ſummoned all the great Prælates and Po tates of this land, with twelve other ſufficient

every Shire, experienced in the Lawes and cu-
mes of the Land, that he might by them learne,
what Lawes and cuſtomes the Land was govern-
before himſelfe came to the Crown thereof;
idly charging and commanding them upon his
h diſpleaſure, they ſhould make true report to
thereof, with out adding any thing thereunto,
taking any there from: who being with the
wes of holy Church, becauſe by it, the King and
throne are eſtabliſhed, among other Lawes and
erties of the Church, recorded this for one,
hich I will *verbatim* ſet down in Latin as it is
ted by the Author.

De omni Annona decima garba eſt Deo reddita,
ideo redenda: Si quis gregem Equarum habuerit,
lum reddat decimum: qui unam tantum vel duas
buerit, de ſingulis pullis ſingulos denarios præbeat.
militer, qui plures Vaccas habuerit, decimum vitu-
, qui unam vel duas, de ſingulis vitulis ſingulos
narios; & caſeum fecerit, det decimum Deo etſi non
uerit, lac decima die. Similiter Agnum decimum,
ellus decimum, Porcellum decimum, Porcellum de-
imum. De Apibus vero ſimiliter, decimum. De Api-
vero ſimiliter, decimum commodi; quinetiam de
ſce, de prato, de aquis, de molendinis, parcis viva-
is, piſcariis, virgultis & hortis, & negotiationibus,
omnibus rebus quas dederit Dominus, decima pars
reddenda eſt, qui novem partes ſimul cum decima
gitur. Et qui eam detinuerit, per juſtitiam Epiſco-
& Regis (ſi neceſſe fuerit) ad ſolutionem argua-
ri Hæc enim S. Auguſtinus *prædicavit & docuit,*

&

See for this the lawes of *Edward* the *Confeſſour*, *num.* 8. & 9. by whom this decree was firſt made, and afterwards ratified by the Conquerour.

& hæc conceſſa ſunt à Rege, Baronibus, & populo. poſtea inſtinctu Diboli multi eam detinuerunt, & cerdotes negligentes non curabant iuire laborem perquirendas eas, eo quod ſufficienter habebant ſuæ neceſſaria. Multis enim locis modo ſunt tre quatuor Eccleſiæ, ubi tunc temporis una tantum & ſic cæperunt minui.

This *Auguſtine*, to whom the *Conquerour* referreth himſelfe, was *Auguſtine* the Monke, *Gregorie* the great about the yeare of our L God 569. ſent here into *England*, to reeſtab the Faith decayd by the *Saxons*; who ſet do ſundry ordinances for the Church, and framed in uniformity of Prayer and government to th which then was uſed in the Church of *Rome*; long before *Aug.* time, as it may by our ſtories pear, (even in the dayes of King *Lucius*, who ſent *Elutherius* a Biſhop *Rome*, for learned men to ſtruct him and his people in the Faith, which about a hundred ad forty years after the *Aſcen* of our Lord Jeſus Chriſt) the Faith of Chriſt here preached in *Britaine*, and fifteen *Archbiſho* are by our ſtories reported, one to have ſucceed an other in the See of *London*, before the irrupti of the *Saxons* into this Land: All which time is like the Churches of God that were in the La were void of this proviſion for the Miniſterie, that I aſſure my ſelfe the payment of Tythes fare more ancient then the time of *Auguſtine*; beit the *Conquerour* citeth there the authoritie *Auſtin*, rather then any former precedent of

Ethelward. lib. unico.

Iocelin of Furnes in his Book of Britiſh Biſhops.

Marianus Scotus.

Brita

ſtine, both for that the doctrine of *Auſtine* was
er known unto the *Saxons*, among whoſe An-
ors *Auſtin* taught and governed as an Archbi-
p, then any of the Fathers of the *Britiſh* Church
whom the *Saxons* were enemies, and their
gue altogether unknown unto them; and beſide
that this doctrine of *Auſtine*, concerning Tythes
ſuited with the generall cuſtome that was then
throughout all Europe in paying thereof.

The next Prince after *William* the *Conquerour*
ordered any thing about payment of Tythes,
ought that I have read to the contrary was
1, who at the petition of the Clergie, eſtabli-
the Articles of the Clergie, which his Sonne
2. confirmed by his Letters Patents under
great Seal, and by conſent of Parliament, at the
ition of the Clergie in the 1x. year of his Reigne.

In *Edward* the thirds time, Writs of *Scire facias*
granted out of the Chancerie, to warne Pre- *An.* 18. *Ed.*
s and other Clerks, to anſwer for the Diſmes 3. *cap.* 14.
; but after the matter was well underſtood by
King, the parties were diſmiſſed from the Secu-
Judges, for ſuch manner of pleas, ſaving to
King his right, and ſuch as his Anceſtors had, &
wont to have of Reaſon.

During the Reigne of *Richard* the ſecond, Par-
of holy Church were drawn into ſecular *An.* 1. *Rich*
ourts for their own Tythes, by the name of 2. *cap.* 14.
ods taken away; And it was decreed by the
, that in ſuch caſe the generall averment of
plaintif ſhould not be taken, without ſhewing
ially how the ſame was his Lay-cattell.

By

By the Statute of the firſt of the ſame King
14. it is acknowledged, that the purſuing for T
of right doth, and of old times was wont to
15. *Ed.* 3. taine to the Spirituall Court, and that the Ju
of holy Church onely have the cognizance of t
matters.

By the Statute of *Ed.* 3. it is ordered, that
niſters of holy Church, neither for money t
for the redemption of corporall penance, nor
proof and account of Teſtaments, nor for t
taken about the ſame, nor for ſolemnitie of Mar
nor for any other thing touching the Juriſdi
2. *H.* 4. of holy Church ſhould be appeached, or arr
or driven to anſwer the Kings Juſtices, or o
miniſters, and thereupon they ſhould have
in the Chancerie, to the Juſtices, when they
mand them.

In the ſecond yeare of *Henry* the fourth, the
ligious of the order of the *Cyſtercians*, that
5. *H.* 4. c. 11. purchaſed Buls from the Pope to be diſcharged
the payment of Tythes, were by act of Parlia
reduced to the ſtate they were in before.

In the 5. yeare of the ſame King it was order
That all Farmers and Occupiers of any lands
poſſeſſions belonging to any Fryers Aliens, ſho
pay all manner of Tythes due to Parſons and Vi
of holy Church, in whoſe Pariſhes the ſame w
as the Law of holy Church required notwithſt
ding the ſame were ſeiſed into the Kings hand
any Prohibition were made, or to be made to
contrary.

About the 7. yeare of the ſame King, ſuch re

perſons as had purchaſed Buls from the Pope in days of *Richard* the ſecond, to be diſcharged nes pertainiug to Pariſh Churches, Prebends, pitals, or Vicarages, not put in execution, were oid from that time forward, to put them in excution, or to purchaſe any other in time to come. After King *Henry* the eigth had diſſolved the naſtaries, and other like religious houſes, and ſold Churches and Tyths thereto belonging to Lay n, (who before that time were not capable of ame; inſomuch as after the diſſolution, when Purchaſers demanded the ſame, they were deto hold plea therof, by reaſon of their incatie) a Statute was made in the 27. yeare of the King, whereby all ſubjects of the Kings Doions were to pay their Tythes, and their duties holy Church, according to the Eccleſiaſticall wes and ordinances of the Church of *England*, after the laudable uſes and cuſtomes of the riſhes and places where they dwelt, or occupied ds, and the ſame to be ſued for before the Ordie, or ſome other competent Judge of the place, cording to the courſe and proceſſe of the Kings cleſiaſticall Courts of *England*: which Statute uſe it took little effect, by reaſon of the obſtiie of the people in not yeilding theſe duties to Laitie, who had purchaſed them, and that the Purchaſers could neither by the order or urſe of Eccleſiaſticall Lawes, ſue for them in any cleſiaſticall Court of this Land, whereby they ight be relieved againſt them that wrongfully deined the ſame, Therefore in the 32. following, another

27. *Hen.* 8. *cap.* 20.

32. *Hen.* 8. c. 7. other Statute was made, wherein it was enacted that all and ſingular perſons of this Realme, other of the Kings Dominions, of what ſtate, gree, or condition ſoever they were would truly and effectually divide, ſet out, yeild pay all and ſingular their Tythes and Offering the owners, proprietaries and poſſeſſors of P nages, Vicarages, and other Eccleſiaſticall places cording to the lawfull cuſtomes and uſages of Pariſh and places, where ſuch Tythes or other ties riſe and grow due. And in caſe where any wrongd and grieved, being either an Eccleſiaſt or Lay perſon, for the wrongfull deteining with-holding of the ſaid Tythes or Offering any part or parcell thereof, the ſame to have power and authority to convent the ſame per or perſons ſo deteaining the ſame, before the O dinarie or other competent Judge to have po by vertue of the ſaid Act, to heare, decide and termine the ſame by definitive ſentence, accor to the courſe and proceeding of the Eccleſiaſt Law, without reſervation of any right to the T porall Judge to give remedie by any ſuit or a for the recovery of the ſame; ſaving in caſe wh an inheritance or freehold in the premiſes is c med, and the perſon claiming is diſſeiſed, defor and put from the poſſeſſion of the ſame, in wh caſes onely, the State aloweth the Tempor Judge to take knowledge, and that onely for t regaining of the right and the poſſeſſion of th heritance ſo loſt.

After the deceaſe of King *Henry*, King *Edw*

his Sonne tending in like ſort the ſtate of the Cler-
, the benefit of his ſubjects, and the practice of
the Eccleſiaſticall Courts of this Land, made a Sta-
te whereby he did not onely ratifie, confirme and
allow ſuch Statutes as his Father had formerly
made, but did further order, that every of the
Kings ſubjects from thenceforth ſhould *juſtly* and
truely without fraud or deceit, ſet out and pay all
manner of prediall tythes in their proper kind, as
they did riſe and happen, in ſuch manner as had
been paid within the forty yeares next before the
making of the Act, or of right and cuſtome ought
to have been paid, with certaine forfeitures and pe-
nalties, as well againſt them which carryed away
any prediall Tythes, before the tenth part thereof
were juſtly divided from the ſame, or otherwiſe
agreed for with the owner thereof; as alſo againſt
thoſe that did let or hinder the owner thereof, his
deputie or ſervant, to view, take, or carrie away
the ſame. Enacting further, that the partie ſo ſub-
tracting or withdrawing any of the Tythes, ob-
lations, profits commodities, or other duties afore-
ſaid, might or ſhould be convented or ſued in the
K's Eccleſiaſticall Court, by the party complainant,
to the intent the Kings Eccleſiaſticall Judge might
determine the ſame according to the K's Eccleſiaſti-
call Laws. And that it ſhould not be lawfull for the
Vicar, or any owner or farmer thereof, contrary
to the ſame act, to convent or ſue any withholder
of Tythes, or any other like duties, before any other
Judge then Eccleſiaſtiall, excepting onely out of the
ſaid Statute things contrary or repugnant to, or
againſt the effect and meaning of the Statute of

Weſtminſter the ſecond, the fifth Chapter, the Statutes of *Articuli Cleri*, *Circumſpecte agatis*, *Sybi Cædua*, the treaties *De Regia Prohibitione*, matters againſt the Statute of *Anno primo Edwardi primi Capite decimo*, and ſuch other matters beſide, wherein the Kings Court of right ought to have Juriſdiction.

SECT. 2.

That the Statutes of the xxvii. *and* xxxii. *of Henr. the* 8. *and the* 2. *of* Edward *the* vi. *cap.* 13. *intended for the true payment of Tythe, and the preſervation of the triall thereof unto the Eccleſiaſticall Courts, are now turned to the hinderance of them both.*

NOtwithſtanding all which good proviſion of ancient Kings before the Conqueſt, and moderne Kings ſince the Conqueſt, for the aſſuring of the ſuit of Tythes to the Eccleſiaſticall Courts only, and the Continuall poſſeſſion that the Eccleſiaſticall Courts have had of the ſame, deduced frō ſo ancient time, as hath bin before ſhewed, & ſo often obtained in contradictorie judgement, as the conſultations thereupon granted do teſtifie: yet ſundry men of this Land, in ſundry ages, have by wrenches and ſubtile deviſes (which are odious in Law, and alſo by all godly and wiſe Judges by all poſſible means evermore to be reſtrained) raiſed up matter out of the ſaid ſtatutes themſelves, contrary to the true

ſence and meaning thereof, to draw the triall of moſt of thoſe matters away from the Eccleſiaſticall Courts. So that thoſe Statutes which then were intended for the good of the Eccleſiaſticall Courts are now become the utter ruine & overthrow of the ſame, contrary to the rule of the Law, and common reaſon, that things which were purpoſed for one end ſhould work unto another.

L. legata inutiliter. ff de adimendis legatis. l. 2. ante finem. C. de juretur. propter calumniam dando.

The firſt advantage they take againſt the Eccleſiaſticall Courts out of theſe Statutes, is gathered out of the twenty ſeventh and thirty ſecond of *Henry* 8. where it is ordered, that all the Kings Subjects ſhall pay their Tythes, according to the laudable uſes and cuſtomes of their Pariſhes, and places where ſuch Tythes grow and become due: which, albeit is undoubtedly meant of Eccleſiaſticall cuſtomes, triable at the Eccleſiaſticall Law, and ſo ever held till now of late, that men think all too much that goeth beſide their own net; yet there want not in theſe dayes, which go about with all might and maine to draw away theſe things unto the Temporall Courts, as belonging to the Temporall Crown and dignitie: wherein they do wrong, not onely to the Kings Eccleſiaſticall Courts, to ſpoyle them of their ancient Juriſdiction, but alſo do injurie to the King himſelf, as though he had but one proper Juriſdiction belonging to his Throne, and ſeat of Majeſtie, and that which were done by his Eccleſiaſticall power, were done againſt his Crown and Dignitie; whereas they are equally united in him, and his Throne is no leſſe ſtayed up by his Eccleſiaſticall power, then it is upholden by

27. & 32. *H.* 8.

his Temporall authority. And therefore a mere paradox is that, that they ſo conſtantly affirm That cuſtomes in payment of Tythes are matter of Temporall Cogniſance onely, and not of Spirituall cognition. For as there be ſecular cuſtomes ſuch as are the cuſtomes of Mannors and Lordſhips where the Lord hath his Rent, his heriot, his reliefe and ſervice; and the tenant againe doth his homage and fealtie, according to the nature of his Tenure, which ſecular cuſtomes the forenamed Statute *De Regia prohibitione*, forbiddeth Eccleſiaſticall Judges to deal in: So alſo there are Eccleſiaſticall cuſtomes, ſuch as is the payment of Tythes, and other Eccleſiaſticall duties, to which Common Lawyers are not to put their hands, but to abſtaine from them, as dedicated to the uſe and triall of the ſpirituall Courts. Otherwiſe would neither the ancient Authors of the Legatines, and Provinciall Conſtitutions of this Land (the eldeſt of which, are equall with the dayes of *Henry* the third, and the youngeſt of them endeth in the reigne of *Henry* the fifth) ever have changed ſo many ſeverall cuſtomes of payment of Tythes, as then were within the Land, and inſtead of them, have brought it one uniforme payment of the ſame, as it is at this day uſed, ſave where either the negligence of the Parſons, or the covetouſneſs of the Pariſhioners hath in ſome point changed the ſame. Neither would theſe ſtatutes of *Henry* the 8. ever have ordered the people ſhould pay their Tythes after the laudable cuſtomes uſages of the Pariſhes where they grew, if the uſage

Provicial. c. quoniam de decimis.

and

nd cuſtome of the payment it ſelfe had not been ubject to the Eccleſiaſticall cogniſance: for in ine ſhall a man ſue for that, the Law allowes him o courſe to come by, if it be denyed in the ſpe-ialleſt point belonging to the ſuite: for this is un-doubted Law: wherever there is an authority or Juriſdiction granted, there are in like manner gran-ted all thoſe things, without which that authority, or Juriſdiction cannot be perfected, or performed.

L. Finali. ff. de officio ejus cui mandata eſt juriſd. & l. 3. ff. de penu legata.

SECT. 3.

That cuſtomes of payment of tythes are tryable onely at the Eccleſiaſticall courts.

AND therefore it is without queſtion, as Tythes by the ſaid Statutes, are onely recoverable by the Eccleſiaſticall Law, and not elſewhere; ſo alſo the cuſtome whereby they are payd, is only triable at the Eccleſiaſticall Law. Otherwiſe this inconve-nience will follow thereupon, which in other Laws, beſide this of ours is a great abſurditie, that the connexitie of the cauſe, which the Civilians call *Continentiam cauſarum*, will be diſmembred and diſjoyned, which by all good pollicie, together with all her parts emergent or annexed, ought to be handled, diſcuſſed, and determined before one and the ſelf ſame Judge; one, I mean not in number, but one in profeſſion, for otherwiſe I ſhould by this aſ-ſertion bar appeales, which is not mine intent.

Bartol. l. nulli C. de judiciis. Glos. c. ſignificaverunt de judiciis.

Which courſe if it were held here in *England*, cauſes ſhould not be drawn peece-meale in ſuch ſort as *Medea* tore her brother lim-meale, and one

Cicero pro Murena.

part

part of it carried to this Court, another to the like unto the rent limbs of the child that were c here and there by *Medea*, thereby to hinder h father from purſuing her; but all ſhould be end in one and the ſelfe ſame Court, which would be great eaſe to the ſubject, who now to his intole rable vexation, and exceſſive charges is compelled to runne from Court to Court, and to gather up as it were, one lim of his cauſe here, and another there, and yet happily in the end cannot make whole and perfect body of it.

Beſide, it is a mighty diſorder in a common-wealth, thus to jumble one Juriſdiction with another, and the very confuſion as well of the one Law as the other; for as Kingdomes are preſerved by knowing their bounds, and keeping their limits, ſo alſo Juriſdictions are maintained and upheld by containing themſelves within the liſts or banks of their authoritie.

Further, unleſſe they will grant that there is an Eccleſiaſticall cuſtome, as there is a Secular Cuſtome, and that the one is as well to be tried in the one Court, as the other is in the other, they will make their own Doctrine in the before-rehearſed Prohibition voyd, where they will have it certain that there is a Secular Cuſtome; and if there be a Secular Cuſtome, then doubtleſſe there is alſo an Eccleſiaſticall or Spirituall cuſtome: for the word Secular, is not put in that place abſolutely, but relatively; and the nature of Relatives, is one to put another, and one to remove another: but in the Secular cuſtomes they barre the Civilian, therefore they

Glos in Clem. unica in verbo aeternaliter de ſumma trinit. & fide catholica.

they grant him the ſpirituall, for of contrary things there are contrary reaſons, and contrary effects: and what that which is propoſed, doth work in that which is propounded, the ſame againe which is oppoſed, doth work in that which is opponed, by which Rule, as Temporall Lawyers are to deale in Temporall Cuſtoms, & ſpirituall men are not to intermeddle therein, ſo alſo Eccleſiaſticall Lawyers are to deal in Eccleſiaſtical cauſes, & temporall Lawyers are not to buſie themſelves thereabout.

L. Fin. §. plus autem de legatis 3. & ibi Angel.

And that this was the intent of the King, when he firſt received the Church into his protection, with all the priviledges thereof, may appeare hereby, that having united both the Jurisdictions in his own perſon, he did not iumble them both together, as now they are, but kept them diſtinct, one from the other; not onely in authoriſing the Eccleſiaſticall Courts that were before, but alſo in uſing the very words and phraſes that the Juriſdictionaries Eccleſiaſticall did uſe every where in their writings, even theſe words whereupon men now take hold to frame Prohibitions, *viz.* (according to the laudable cuſtomes and uſages of the pariſhes and places where where ſuch Tythes grow) which were the words of *Innocent* the third in the Decretalls upon the title of Tythe, long before theſe Statutes were made, or any other Statutes concerning the true payment of Tythes; and *Lindwod* in the ſame title of Tythes often uſeth the very ſelf ſame words and phraſes that the other doth: ſo that if theſe words made noe Prohibition before the Statute (as I think it cannot well be

shewed to the contrary) neither ought they to
it now since the Statute; for that they are spo
still in the Church businesse, and not in a tempo
rall matter: whose government, although it
under one and the same Prince, that the tempor
state is, yet is it distinct from the same, as ev
it hath been since there hath been any setle
1 Cor. 5. forme of Church-government in any commo
wealth, as may appeare both by the exam
of Saint *Paul* which never goeth to any tempor
power to punish the incestous person, altho
there were sundry lawes then both in Greek a
Latine written of these matters, but doth it by th
spirituall sword alone: and also by that, that i
matters of jarre for worldly causes between bro
ther and brother, he forbids such as were n
Christians to go to law before infidels, but advis
1 Cor. 6. them rather to appoint Judges among themselv
to deside such controversies: which albeit in tho
dayes was meant as well of lay Christians, as of th
Ministers of the Gospell, for that the number o
them was small, and the causes of suit they had on
against an other were not many, any might easi
be ended by one and the selfe same consistorie;
yet when the number of the Christians increased,
and the Church got some rest from persecution,
the Jurisdiction was again divided; & as there were
secular Courts appointed by Princes, wherein tem-
porall mens causes and lay businesses were heard,
so there were also by the same authoritie erected
Ecclesiasticall Courts and Bishops audiences,
wherein either Ecclesiasticall mens causes alone,
or

ſuch as they had againſt Lay men, or Lay men againſt them were treated of, and determined. *C. de Epiſcopali audienta tertia.*

So that this was no new deviſe of *Henry* the eighth, or *Edward* his Sonne, that when they took upon them the ſupremacie over the Church, as they had before over the common-wealth, they did not miſhmaſh both the States together, and made one confuſed heape of them both, but left them ſevered as they found them, onely affording either of them an equall proportion of protection; for that by theſe two parts, the Kings Monarchie is compleat, and himſelfe is the head and cheife Gouernour of the whole and entire body of his Realm. For this was exemplaired unto them in all former ages, ſince the Church and common-wealth had any loving and kind cohabitation together as hath been before remembred. And therefore do they wrong to the aſhes of thoſe Kings deceaſed, which by ſubtill ſence and ſtrained interpretations, draw theſe Lawes which they intended for the benefit of the Church, and Church-government, to the overthrow of the ſame, as though the Poſitive Lawes of the Kingdome, could not ſtand, if the Lawes of the Church continued and ſtood upright.

CHAP.

SECT. 4.

That the limits and bounds of Parishes are of Eccleſiaſticall cogniſance onely.

VPon the ſame words of the ſame Statute, (perhaps at any time there grow any controverſie about the limits or bounds of Pariſhes) they draw the ſame by like importunity from the triall of the Eccleſiaſticall Law, unto the Common Law, avouching the ſame alſo to be of the Temporall cogniſance; and yet *Lindwod*, who lived in the dayes of *Henry* the fifth, making a Catalogue of the principall matters that in his dayes belonged unto the Eccleſiaſticall Courts, reckoneth the bounds of Pariſhes for one, And very like it is that it ſhould ſo be, for that Eccleſiaſticall men firſt in this Kingdome made diviſions of Pariſhes, as by our owne Chronicles it appeareth; and the firſt practice thereof within this Realme, came from *Honorius* the fourth Archbiſhop of *Canterbury* after *Auguſtine*, who himſelfe died in the year of our Lord God 693. * although otherwiſe the thing it ſelfe be more ancient, and deſcends from the councell of S. P[illegible]

Regiſtro Eccl. Xpi. Cant. Stow.

* He that ſhall trace the Writers for that which concernes the originall of Pariſhes, may find ſome probable iſſue, if the courſe of Antiquitie runne cleer. Thoſe that gave example to others in this matter, are conceived to be the ancient Roman Biſhops; for it was recorded in the *Ponticfial* of *Damaſus* (as ſome would have it) But in *Anaſtaſius Bibliothecar.* we find that when *Peter* had appointed and ordained Prieſts &c. and *Clemens* had reduced them to a certaine number, Pope *Euariſt* aſſigned to each

them his Pariſh, or as they then ſaid, his Title: For ſo a Title is underſtood by *Onuphrius*, and ſo in effect it may be taken, though otherwiſe *Parœcia* is *Accolatus ad ſacram Ædem, Titulus autem Ædes*. And it may ſeem, that *Titulus* might be taken for *Parœcia*, becauſe it hath been taken for that. For in the Councels we ſhall ſometimes take a pariſh put for a Pariſh Church, which is the meaning of *Titulus*. See *Baronius ad an. Ch.* 112. where the learned Cardinall ſetteth down at large what theſe Titles were, and why they were ſo called. As for the time when theſe Pariſhes were aſſigned by *Euariſt*, it muſt be about the beginning of the ſecond Centurie.

This done, and the number of new Converts increaſing, *Higinius* ordained ſeverall Prieſts in ſingular Pariſhes, & the chief of thoſe he called *Cardinales Presbyteros*: and here we muſt believe, that the Romiſh Cardinals began, if at leaſt we will be guided by their Hiſtorians. In after-times Pope *Denis* improved theſe conveniences invented by his Anteceſſours, and ſet limits to Pariſhes. And this was done about the year 260. If theſe things be anſwerable, as they are generally received by the Romiſh Antiquaries, then it may ſeem that other Nations took the like proviſion ſooner or later, according to their example. And this is the rather to be believed, becauſe this Pope *Dionyſe* wrote an Epiſtle to *Severus* Biſhop of *Corduba*, to obſerve this order in his Succeſſe, and look what courſe himſelfe took, that he ſhould direct other Biſhops to do in like manner. What was elſewhere done doth not ſo neerly concerne, but here at home the firſt diviſion of Pariſhes is ascribed to *Honorius* Archbiſhop of *Canterbury*, as the Author here hath cited out of the Regiſter, and it is approved by *Cambden*. *Sed caveatur &c.* ſaith *Marſil* in his Book *de red. Eccl. chap.* 12. But heed muſt be taken to the Equivocation of the word Pariſh; for it hath not alwaies had one and the ſame acception. Sometime when nothing is named but a Pariſh, the whole Dioceſſe is underſtood, and this notion of the word often occurs in the Councels and elſewhere. According to this ſence *Barbatia* ſpake a wide word for the Pope, where he ſaith that in reſpect of him, the whole world was but one Pariſh, *tract. de offic. Cardinal.* Otherwiſe a pariſh is taken for ſuch a part of the Dioceſſe, which is aſſigned to ſome prieſt, arbitrarily ſent and maintained by the Biſhop; for it is to be noted that ſuch a pariſh paid all their tithes to him, and he to his Clergie, for the primitive communitie of goods, becauſe of inconvenience ceaſing in the Church, this cuſtome

was

was introduced, that all Church dues should be at the Bishops dispo-
sing, so that being geometrically divided into four portions, he shou
have one part, and his Clergie another, the third to be distributed
the poor and Strangers, and the last part to be reserved to the Pa
shoners for the repairing of Churches. And that this was the
especially of the Romish Church, plainely appeaeth by the answer
Gregorie to our *Austin*, in *Bede lib.* 1. *cap.* 27. The collection of the
dues was committed to the care of the *Chorepiscopus*, as appeareth by
an Arabick Canon of the first Councell of *Nice*, which together wi
other Ooecumenicall Councels, and those Canons which are called
Apostles, and some history of the primitive times, out of *Clement* &c.
we enjoy and esteem as a most peculiar monument transported hith
out of the Easterne world, and placed in our publick Librarie, by
bountie of a worthy Benefactor Sir *Thomas Roe*. The latter end of th
Canon saith thus, but for our great want of Arabick Characters,
must be read in Hebrew —— ...ר איצא אלי מא פי כלטאנה מן
...קרי ורסאתיק פיפרץ עלי כל קריח ואלרסתיק שיא לח
...ר אחתמאלהא לנפקתה אעני אלאסקף תניכיח לה פי
...ו שנה ריאירתיה קאים לכונ כרסם מונה אלאסקף ועליה
...א צדקאת ואנאביאת ומא יצוי בה אלכהנה לגדי בינה
...נהם אלאלאלפה: where the Cannon provideth, that it should
belong to the Charge of the *Chorepiscopi* to see that in every
their severall Cities and Cuntry-viliages these dues should
collected proportionably as every place should be found able
and that these dues so collected, should be every yeare brou
to the Bishops place of abode, that there they might be dispose
toward the maintenance of the Bishop, the reliefe of the poor
strangers, and the encouragement of his Clergie, that so there mig
be concord and unanimity between him and them, &c. The Lat
Translation of these Canons is set forth by *Turrian* and *Alphons. Pisa*
and is to be found in the 1. Tome of the Councels set forth by *Bin*
In the Translation, this Canon is the 54. but he that mindeth to se
in the Arabick must look for the 58. Some say, that these Canons
suppositions; I onely know that they may be so, not that thay
and however it may be dull to ertartain any thing that shall be obtru
ded, yet the rejection of ancient Authors and Councels should be
rily concluded upon. Thus much notwithstauding it recorded, that
reason

reason of the Arian incendiaries, a compleat number of the Canons of this Councell was so rarely found, that *Athanasius* himselfe, who was present at the Synod, was forced to send into these parts, to the Bishop of Rome, that then was, to desire from him a perfect Copie, because in the Easterne world, few or none had escaped the fire of the Arians. This we have out of those Epistles, which are supposed to have past between Pope *Marke* and *Athanasius* concerning the burning of the decrees of this first *Nicene* Councell; and if these be true, the Canons here are the lesse to be suspected: But against the credit of those Epistles, the Cardinals *Bellarmine* and *Baronius* have consented, and it may well be thought they have some cause, for that these Canons much availe their faction, and depend not a little upon the authoritie of these Epistles; yet their reasons against these Epistles are, for the most part Chronologicall; and because such as these are subject to much hazzard, therefore our confidence in believing may be arbitraje, & at our own disposing. But be these Canons how they will, yet a most expresse monument of this *Quadribartite* division of Church dues, may be noted out of an Arabick Canon of the Coucell of *Antioch*, Canon 25. I say, an Arabick, nor for curiositie, but because I find this matter more fully there set down, for the Greek saith thus, Επίσκοπον ἔχειν τῶν τῆς Εκκλησίας πραγμάτων ἐξουσίαν ὥστε διοκεῖν εἰς πάντας τοὺς δεομένους μετὰ πάσης εὐλαβείας καὶ φόβου θεοῦ. That the Bishop shall have the Church dues in his power, that he may dispose of them to every one that needeth religiously and in the fear of God. But the Arabick Canon more distinctly — אלאסקפ משלמ עלי מתאע אלבנימה ומאלהא אן יקסמה ווורעה בין כהנתה ועלי אלי אברשיתה ועלי אלפ אלפקרא ואלמסאכין ויאחד בומן דלך קיתה ומא תחתאג אליה: That the Bishop shall have at his disposing the Church dues and revenues, to the end, that he may divide and distribute them to his Clergie, to the Parishioners (for the repairing of Churches) to the poor and needie, and that he make take to himselfe what shall be necessarie for his own expence &c. This *Quadripartite* Division was used in most places, but most principally in the Roman Church. For in some other the Bishop had the third part. See *Filesacus* in his Book *De Sacra Episcoporum Authoritate.*

Concerning the Originall of a Parish in these two former Aceeptions, it may be acknowledged to be a divice of the ancient Roman Bishops, and

and to have been derived from them to other Nations. But a Pa
may be alſo taken for ſuch a part of the Dioceſſe, which is limited
ſome reſidentiarie incumbent, allowed by the Biſhop, and maint
by the Church dues in his own right. And this conſideration of
riſh moſt of all agreeeth with thoſe which we now have. And it
very well be ſuppoſed, that theſe latet Pariſhes have had their be
ning from the inconveniences of the former. And the deſignment
limitation of theſe however it might have ſpeciall encouragem
from the devotion of lay men, yet the principall ſtroake, was alw
given by the Eccleſiaſticall, to whom it pertained to conſecrate
Churches, and make them baptiſteriall. And that the dividing of
ſhes ſhould of right belong unto Eccleſiaſticall men, it may be the
reaſonable, becauſe the firſt that ever divided any Pariſhes were
Roman Biſhops, and they did not onely ſo, but alſo gave direction
other Prelates in their ſeverall Provinces to do the like, eſpecially
that be true, which we have formerly cited out of that Epiſtle
Pope *Denis* to the Spaniſh Biſhop. However *Alexander* the
C. Avaritiæ. De Præbend. & Dig. gave command to the Canons
gular of *Yorke* Dioceſſe that they ſhould not preſume to divide Pa
ſine conſenſu Archiepiſcopi. And ſome encouragement may be had fro
decree made in a Synod holden at *Weſtminſter*, about the yeare 11
which ſaith, c. 4. *Nullus Abbas, nullus Prior, nullus omnino Monachu
Clericus Eccleſiam, ſive decimam, ſeu quælibet beneficia Eccleſiaſ
de dono laici accipiet ſine proprii Epiſcopi authoritate, & conſenſu:
ſi præſumptum fuerit, irrita erit donatio hujuſcemodi. Chron.
Biblioth. Bodleian.* And the like intimation is given in an o
Councell, holden at the ſame place, in the yeare 1149. called by
moſt reverend father in God *William*, then Lord Arch-biſhop of
terbury. There it is ſaid, *cap.* 10. *Vt nulla perſona Eccleſias vel dec
ſeu quælibet alia Eccleſiaſtica beneficia det vel accipiat ſine conſenſu
authoritate Epiſcopi*. If we apply theſe decrees to the matter in
we may deduce ſomething anſwerable to that which is inquired be
Laymen were not to meddle with the ordering of Tyth-payment,
and yet in this diviſion of Pariſhes, a principall reſpect was had to
conſideration of Tythes, and therefore it was, that pariſhes were li
ted with ſuch great care and curioſitie. For *Bartol* ſaid, That if it
doubted concerning a houſe, in what pariſh it ſhould ſtand, it muſt
conceived to be of that into which it opens, if it be opened ſeve
wayes

…yes, a poſterne gate was not reſpected, but it was judged to belong …to that Pariſh into which it opened at the chief Gate.

At what time this laſt kind of Pariſhes began elſewhere, we enquire …, when they began here at home, we finde not, unleſſe we under…ſtand ſuch as theſe in the Diviſion of *Honorius*: however they muſt be …uſe before the dayes of *Edgar*, as it ſeemeth by the Saxon lawes of …time. See the Lawes of *Edgar. cap.* 1.

…which he gave to *Titus*, to appoint Elders in every Citie: But that Cities and Countries againe are divided into ſeverall Pariſhes, it was the ordinance of Pope *Dyonyſius* about the yeare 266. and from him derived into this and other Realmes; and the diſtinction thereof was chiefly deviſed that it might be known of what congregation every people were, and that ſo they might be trained up in the School of Godlineſs under their own Paſtor or Miniſter. But that now the diviſion of Pariſhes doth ſerve to other politick uſes, it comes not of the firſt inſtitution thereof, which was meer Eccleſiaſticall: but it groweth out of a ſecond cauſe, that is, becauſe being ſo fitly and aptly primarily divided by Eccleſiaſticall men as they are; the Princes therefore did uſe the opportunity thereof for temporall ſervices, ſubdividing the ſame againe into may Tythings or like ſmaler diviſions, for the more ſpeedy ſervice of the King, and better ordering of the commonwealth, Which our ancient Fathers well knowing, never called the ſame in queſtion, acknowledging therein the good they had received from Eccleſiaſticall men, by this partition of Countries into Pariſhes: but men of later age being leſſe thankfull then they, and loath to ſeem beholding to Eccleſiaſticall *Tit. cap.* 1. *verſ.* 5.

ſiaſticall Courts for any matter of good order and diſpoſition, have arrogated the ſame wholly to the Temporall Courts; as though the Eccleſiaſtical Judge could not as well diſcerne what two or three honeſt men depoſe and ſay as concerning the limits or bounds of a Pariſh, as twelve meane men of the countrie who are upon like depoſitions, to give up their verdict. But for the limits of Biſhopricks, I acknowledge that they are Temporall, for that they were not primarily deſigned out by Eccleſiaſticall men, and their direction, but were aſſigned to Provinces, or Shires, firſt deſcribed and diſtinguiſhed by Princes: but for Pariſhes, neither reaſon nor antiquity concurs with them, that they ſhould be temporall, or that they ſhould be uſurped or challenged to be of the temporall cogniſance.

And ſo much for thoſe prohibitions, which they commonly frame out of the 27. and 32. of Henry the eight, not that there are no more but theſe, but that having a taſt of theſe, there may be like Judgement made of the reſt.

SECT. 5.

That the clauſe of the treble Dammages in the 13. chapter 2. Edward the ſixt is to be ſued in the Eccleſiaſticall Courts onely.

OUt of the Statute of the 2. of *Edward* the ſixt *cap.* 13. they raiſe many prohibitions, the firſt whereof in order of the Statute, although the laſt in practice, is the prohibition of treble dammages upon

upon not dividing ad ſetting out Tythes or at leaſt, for the not compounding for them before they be carryed away: Which forfeiture they ſuggeſt, and thereupon bring a probibition, and ſo draw the whole ſuit of Tythes into their Courts, contrary to the true meaning of the ſtatute, which would have thoſe treble damages, in caſe of not juſtly dividing and ſetting out, or not compounding for the Tythes before they be carryed away, be no leſs recoverable before an Eccleſiaſticall judge according to the Kings Eccleſiaſticall Law, then the forfeiture of double value (by the letting & ſtopping of them to be carryd away, whereby they are loſt, with the coſts thereon growing is remediable at the ſame Law, for albeit the clauſe which is to redreſs this wrong, be put after that part of the Satute, which concerns the ſtoppieg and letting of Tythes to be carryed away, yet when there is a great reaſon that it ſhould ſtretch it ſelfe to the firſt branch of the proviſion, as to the ſecond, and the ſecond branch hangeth on firſt by a conjunction copulative, and there is no heterogeny or deſparity in the matter, whereby it may not be as well verified in the one branch, as in the other, I ſee no reaſon why it ſhould not equally reſpect them both according to the rule of the Law; *Clauſula infine poſita refertur ad omnia præcedentia, maxime quando non reſultaret intellectus contrarius* as here it doth not: for the intendment of either branch of the ſtatute is, to procure by their ſeverall forfeitures, a juſt and true payment of Tythes, the recovery whereof, as the preciſe words of the ſtatute in one member reſtraine unto the Eccleſiaſtiall Law; ſo the Indentitie of reaſon in the other

C. 6. tit. 28. l. 1.

member doth confirme it unto the ſame Law, ſo where there is the like reaſon or equitie, there ought to be the like diſpoſition or order of the Law.

L. Illud ff. ad l. Aquiliam.

Beſide if the principall cauſe it ſelfe be triable in the Eccleſiaſticall Court, why ſhould not thoſe things which hang thereon by tryed in the ſame Court, for they are but as it where acceſſories to the principall, and ſo not onely follow the nature of the principall, but alſo belong to the Court of the principall, and are determinable where the principall is, for otherwiſe happily there might fall out contrary ſentences of one and the ſame thing, the one condemning, the other abſolving.

Further, in that Court wherein the courſe of Juſtice already is begun, the cauſe may with the leſſe labour and eaſier expences be ended, being for the moſt part determinable by one ſentance, then that a new proceſſe thereof ſhould begin before an other Judge, who knoweth little or nothing of the principall matter, and therefore cannot ſo eaſily decide the acceſſorie.

Laſtly, thoſe which take this courſe, firſt to ſurmiſe a forfeiture, then to draw the originall ſuit whereupon the forfeiture grew into queſtion, bring in a proceeding far different from the common ſuite of all well ordered Courts, in all Nations, among whom the connuſance of the cauſe, and tryall thereof goeth before, and the forfeiture or execution thereof followeth after: But in this *Hyſteron proteron*, the execution is in the forward, and the tryall is in the reward: In which doing they deal much

as *Cacus* the Gyant dealed with *Hercules* Oxen who to the intent that *Hercules* ſhould not find what way they were gon, drew them backwad by the tayle into his Cave; but as that device ſerved not *Cacus*, but that *Hercules* had his Oxen againe, ſo it is to be hoped, the Reverend Judges of this Land, will not long ſuffer this ſubtiltie to prevaile, but as it came in like a Fox, and reigned as a Wolfe, ſo in the end it ſhall dye and vaniſh away like a vaine device, much like the deſtinie of *Boniface* the eight: for the reverend Judges are not onely to miniſter juſtice between man and man, ſo that every man may have his own, and none be oppreſſed by an other, but alſo they are to carrie an upright and indifferent hand between Juriſdiction and Juriſdiction; yea though themſelves be parties to the matter in queſtion, ſo that one Juriſdiction eate not up an other, as the Locuſts in *Egypt* devoured up all the green things of that land.

SECT. 6.

That the naming of Law or Statute in a Statute, doth not make it to be of the Temporall cogniſance, if the matter thereof be Eccleſiaſticall.

ANother rendevous they make of the words of this Proviſo (Law, ſtatute, priviledge, preſcription, or compoſition reall) as though all which falleth under any of theſe tearms muſt belong to the tryall of the Common Law, and not to the

cogniſance of the Eccleſiaſticall Law, and that forſooth, becauſe theſe words & tearms are expreſſed in the Statute: which is much like unto that, as one would needs have a houſe, to be Maſter Peacocks houſe, becauſe he ſaw a Peacock ſit upon the top thereof: But it is not the naming of a thing in Law or Statute, that makes it to be of the Temporall cogniſance, or otherwiſe: but it is the nature or qualitie of a thing named, that rangeth it under the one Law, or the other. So that if the matter ordered in the Law or Statute be Temporall, the cogniſance ſhall be Temporall; if Spirituall then the caſe is determinable in the Eccleſiaſticall Law: for this Proviſo is not prohibitorie, as the laſt proviſo of this Statute is, whereby Eccleſiaſticall Judges are forbidden to hold plea of any thing that is in the ſaid proviſo contained; but it is rather directive, and ſheweth where the Eccleſiaſticall Judge is to give way to immunities, and to pronounce for them: ſo that for any thing is conteined in this Prouiſo to the contrary, the cogniſance of theſe matters, eſpecially, Priviledge, Preſcription, and Compoſition, ſtill remaineth at the triall of the Eccleſiaſticall Law, as they did before this Proviſo was made for Tythes, and other Eccleſiaſticall duties, as may appeare by the ſeverall titles in the ſame Law hereon written.

De præſcript. l. 2. tit. 26. De Privileg. l. 5. tit. 33.

And for the other words, [Law and Statute] therein mentioned: (when as the King hath two Capacities of government in him, the one Spirituall, the other Temporall, and his high Court of Parliament, wherein Lawes are made, doth ſtand

as well of ſpirituall men, as Temporall men, and ſo ought to ſtand in both houſes, if the ancient Book *De modo tenendi Parliamenti* be true and authenticall, which makes the upper Houſe of three States, the Kings Majeſtie, the Lords Spirituall, and the Lords Temporall; and the lower houſe in like ſort of three other the Knights, the Procurators for the Clergie, and the Burgeſſes; and his Majeſtie hath within this Realme aſwell Eccleſiaſticall Lawyers as Temporall, which are no leſſe able to judge and determine of Eccleſiaſticall matters, then the Temporall Lawyers of temporall buſineſs) it is not to be imagined, but as his ſacred Majeſtie will have thoſe Laws to be held temporall, and to have their Conſtructions from Temporrll Lawyers, which are made and promulged upon Temporall rights and cauſes: So alſo his highneſſe pleaſure is, and ever hath been of all his predeceſſours, Kings and Queens of this Land, that ſuch Lawes and Statutes as are ſet out and publiſhed upon Eccleſiaſticall things and matters, ſhall be taken and accounted Eccleſiaſtical, & interpreted by Eccleſiaſticall Lawyers, although either of thē have interchangeably each others voyce in them, to make them a Law.

And that the King doth infuſe life into either of the Lawes, when as yet their ſubſtance is unperfect, and they are as it were Embryons, is in temporall matters, by his temporall authoritie, and in ſpirituall matters, by his ſpirituall authoritie, for to that end he has his double dignitie in that place, & alſo the Eccclefiaſticall Prelats ſuſtaine two perſons in that place, the one as they are Barons, the

other as they are Biſhops: So that even the order of the Houſe do evince, that there are two ſorts of Lawes in that place unconfounded both in the head and the body, although for communion ſake, and to adde more ſtrength to each of them, the generall allowance paſſeth over them all. And as they reſt unconfounded in the creation of them, ſo ought they to be likewiſe in the execution of them, ſo and as the Temporall Law ſorts to the Temporall Law ſo the Spirituall Lawyers Statutes ſhould be allowed and allotted unto the Spirituall Lawyers.

And as the nomination of theſe words Law or ſtatute in this precedent Proviſo, makes not the Law or ſtatute Temporall, but that it may remain wholly Eccleſiaſticall, by reaſon of the Spirituall matters it doth containe, and the power of him that quickneth it, & powreth life thereinto: ſo much leſſe can the inſerting of theſe termes, Priviledges, Preſcriptions, or Compoſition reall, in title the Common Law to the right thereof, or the Profeſſours of the ſaid Law, to the interpretation thereof, for that matter of theſe titles ſo farre as they concerne Tythes, and other Eccleſiaſtical duties, have been evermore ſince there hath been any Eccleſiaſticall Law in this Land (which hath been neer as long as there hath been any profeſſion of Chriſtianitie with us) of Eccleſiaſticall ordinance, neither ever were of the Temporall cogniſance, untill now of late, that they tranſubſtantiate every thing into their own poſſeſſion; as *Midas* turned or tranſubſtantiated every thing that he touched into gold.

CAP.

CHAP. III.

SECT. 1.

How it comes to paſſe, that when tythes were never clogged with cuſtome, preſcription, or compoſition under the Law, they are clogged with the ſame under the Goſpel, and the cauſes thereof.

BUt here it will not be amiſſe to enquire (ſince Tythes came in the beginning of the primitive Church, within a little time after the deſtruction of *Jeruſalem*, and the ſubverſion of the Jewes policie, unto the Chriſtian Church and common-wealth, void all theſe incumbrances, as ſhall appeare after by the teſtimonie of ſundry of the ancient Fathers, which were neer the Apoſtles time) how it comes to paſſe (ſince Tyths are no leſſe the Lords portion now, than they were then, and in the Patriarchs time before them) that theſe grievances have come upon them more under the Goſpell then ever they did under the Law: for then never any Lay man durſt ſtretch out his hand unto them, to diminiſh any part thereof, but he was charged with robberie by the Lords owne mouth: and in puniſhment thereof, the heavens were ſhut up for giving raine unto the earth; and the Palmer-worme and Graſhopper were ſent to devour all the green things upon the earth. And for Eccleſiaſticall men, it is not read any where in the Scripture, that ever they attempted to grant out any priviledge of Tythes to *Malach.* 3:

any perſon, other then to whom they were diſpo-
ſed by the Law, or to make any compoſition ther-
of between the Lay Jew, and the Lords Levites; e-
very of the which have been not onely attempte
againſt the Church in Chriſtianity, but execute
with great greedineſſe: ſo farre worſe hath been th
ſtate of the Miniſtrie nnder the Goſpel then was th
condition of the Prieſts and Levites under the La

SECT. 2.

That the cauſes are two fold: Firſt, the Violent in-truſion of Lay men; and ſecondly, the over-much curioſity of School men; and firſt the firſt cauſe, and therein concerning Charles Martles *Inſeu-tions, and the violent preſcriptions enſuing there-upon.*

THe begining whereof, although it be hard fo
me to find out, becauſe there is ſmall memor
thereof left in Stories; yet as farre as I can by
probabilities conjecture, this great alteration i
Eccleſiaſticall matters, came by two occaſions: th
one by the violence of the Laitie, thruſting them-
ſelves into theſe Eccleſiaſticall rights, contrary t
the firſt inſtitution thereof; for when they were fir
received into the Chriſtian world, they were rece
ved and yeilded to for the benefit of the Cleri
onely, as in former time under the Law, they ha
been for the uſe of the Prieſts and Levites only
The other was, the too too much curioſitie
Schoolemen who being not content with the ſimp
entertai

tertainment of Tythes into the Church, as the cient Fathers of the primitive Church received em, would needs ſeek out how, and in what ght, and in what quantitie this proviſion ongs unto the Church, wherein they did their overmuch ſubtilty, rather confound truth then make that appeare which they tended to do. By the firſt of theſe was brought in hat great preſcription, which is called the preſcrip-ion beyond the *Lateran* Councell, whereby Lay en held Tythes in fee, without paying any thing erefore unto the Church; and out o that iſſued reſt of thoſe pettie Preſcriptions, which we now ave, which are nothing elſe but imitations of the ſt. By the ſecond, came in Priviledges, Cuſtomes, d Compoſitions; or if they came not in wholly them, yet ſurely were they much ſtrengthned by em; but of either of theſe after in their places. ut for that all theſe forenamed grievances in the hurch, as farre as my reading ſerves me, Preſcrip-ion is the eldeſt and firſt thruſt into the Church, d violated the Liberties thereof; I will firſt be-in thereby, and ſhew upon what occaſion it firſt eiſed upon the Church, and prevailed againſt her, d then I will ſpeake of the reſt in order.

It is out of queſtion that from the time of *Origen*, who lived within foure ſcore yeares after the death of Saint *John* the Evangeliſt, as alſo did *Cyprian*, who was his coequall in time, and ſo along by the ges of *Chryſoſtome*, *Ambroſe*, and *Auguſtine*, and ſome of the purer Popes, as *Urban* the ſecond, *Dionyſius* and *Gregorie* the great, there was good uſe of Tythe

in

in the Churches, where Christian Religion
imbraced, as may appeare by every of their
monies that God had not appointed it to be a
vision onely for such as served at the Altar
the Law, but also was purposed by him from
begining, to be a maintenance for the Mini
under the Gospel: and therefore *Origen* in his
Homily upon *Numbers* speaking of Tythes, saith
I hold it necessarie that this Law or precept be
served according to the letter: and upon the
of *Matthew*, he thinketh Christs words uttered
as concerning Tythe, to be a precept no lesse
sarie for the use of Christians, then they had
for the Jewes: and therefore he accou
Tythe neither ceremoniall, nor Judiciall, but
and perpetuall. *Cyprian* in his Lxvi. Epistle ad
the Clergie of his time, since they had Tyths
ted unto them for their maintenance, they
nor absent themselves from Gods service. *Ch*
stome upon the viii. of the *Acts*, useth this argu
to perswade husband-men to pay their Ty
truly unto the Church, That it is good for the
to do, for that there are continuall prayers and
tercessions made for them by the Ministrie. *J*
upon *Timothy* saith, The precept of payme
Tythes, is as well to be understood in the C
stian people, as in the Jewes. Read *Ambrose*, in
Lent Sermon, and *Austine* in his xliiii. Homily,
Gregorie in his xvi. Homily, and you shall find
lesse plaine places for the continuance of the p
ment of Tythes among the Christians, then
former were. Addde to these the practise of *Dy*

himſelfe, who by *Jeromes* account flouriſhed in yeare 266. who not onely divided out pariſhes, wing the example thereof from Saint *Paul*, ho firſt apointed Biſhops in Cities, but alſo aſſign- orderly to every Pariſh his Tythes. All which d in the Chriſtian common-wealth, in a decent comely ſort, untill the irruption of the *Hunnes*, oths, and *Vandals*, upon the Chriſtian World, ho firſt invading *Italy* under the Emperour *Juſtini-* did for many yeares ſo harrrow the whole ountrie, and eſpecially *Lombardie*, as that they t not almoſt a man of excellent Religion any here unperſecuted, overturned Churches, burnt braries, overthrew Schooles of learning, and to hort, what wickedneſſe did they not? inſomuch *Gregorie* the great, being otherwiſe a very good an, and one that did relie himſelfe upon the pro- idence of Almighty God, verily thought and taught hat the end of all things was then come: but after oſe fierce and barbarouſe people once ſet their e to go againſt *France*, (which had been hither- free from that innundation which hapened in e dayes of *Theodorick*, who lived about the 650. yeare of the incarnation of our Saviour Jeſus hriſt; * *Charles Martel* the Father of *Pipin*, after ing of *France*, being then great maſter of the Kings ouſe, would not (although otherwiſe he were a

Hoſpinian de orig. Monach.

* Concerning *Charles Martel* we finde in

orie thus. That though he was a man of a rare and warlike ſpirit, d vouhſafed great protection to the perilous times he lived in, yet lſo we finde, that he gave occaſion to many miſerable inconvenien- s to follow, by ſuffering himſelfe to be ſo notorious and unuſuall an ample of Sacriledge. For when his great deſigne againſt the *Sara-*

cens

cens ſtood in agitation, he refuſed to put himſelf upon ſo deſperate attempt, unleſſe the Clergie would yeild up their Tythes and maintenance for the time being towards the expences of the warre. The condition the Clergie accepted of, moved thereto by the exigence of that age, & the faire preteuce of *Martel*, who promiſed that he would reſtore all again & that with ample intereſt, but that *Charles* never did this, theſe days can teſtifie to thoſe. This fact of *Martel*, if it were ſo, is execrable, and if it were not, yet the opinion of it hath been ſo hardly entertaiced by Tradition, that we find him confidently damned in the Legend. And this Storie of his damnation is faſtned upon *Enchre* Biſhop of *Orleance*, who is ſaid to have ſeen in a viſion this *Martel* in his torments: and that *Enchre* might believe what he ſaw, an Angel inſtructeth him to ſeek for *Martel* in his Sepulchree, and ſo he did but found him not, but he found the place all black, and inſtead of *Charles* a direfull Serpent. See the Annalls of *Orleance*. Concerning the damnatiom of *Martel*, we have nothing to ſay what may be thought of the viſion ſhall here after be enquired. this is certaine, and believed by all, that this *Charles* was a great oppreſſor of the Church. For to let paſſe that of *Hincmare* Archbiſhop of *Rhemes*, *Gregorie* of *Tours*, *Sigebert* and others, it is obſervable, that this could not be omitted by *Dupleix* himſelfe, one of the greateſt friends that ever *Martel* had to find in Hiſtorie. For though this Author in one place ſpending his credit in one place upon the admiration of *Charles* ſetteth him in the ſame line with *Julius Cæſar* and great *Alexander*, warranting him to be *Sans doubte le plus le plus grand homme que la France ait jamais porté*, yet elſe where he could not denie that *il a voit banni aucuns Eueſques de leur ſeiges & mis en leur place des hommes lais.* he had thruſt Biſhops out of their Sees, and put Lay men in their place and to make up the complement of this Sacriledge, he ſpared not that Biſhop of *Rheims* *qu'il avoit leves des fonts de Baptiſme*, as *Fauchet* hath obſerved. To weigh down this grand impietie *Dupleix* bringeth into the ſcale *mille aime.* 10000 ſoule converted to Chriſtianitie by the help of *Charles*: but the converſion was wrought by the Arch-biſhop of *Mentz* and if it were promoted by *Martel* it was well; yet his ſonne *Pipin* thonght this ſatiſfaction too little, and therefore *volut eſtre inhumé à ventre & la face contre terre pour l' expiation des peches de ſon Pere*, he would be enterred with his face and belly downwards to expiate his Fathers tranſgreſſions, as *Dupleix* alſo was contented to obſerve, and is to be found in the Antiquities of *France*.

Therefo

Therefore *Charles Martels* Sacriledge in generall muſt be granted. And it hath been alſo conſtantly received, that in partieular this *Charles* defrauded the Church of her Tythes as hath been ſaid. But this paſſage of the Storie hath found ſome oppoſition. One of the firſt that ever ſhewed himſele an adverſarie to this opinion, was *Stephen Pasquier*, a man, whom though we forſake in this particular, yet we may ſafely cõmend for his variety of learning otherwiſe, an ample teſtimonie whereof he hath given in his Book *De Recherches de la France*: ſaving that he cannot be pardoned for his harſh and envious minde towards the dignitie & Juriſdiction of the Clergie, which diſcovereth it ſelf in ſeverall paſſages of his 3. Book. In the ſame Book, Ch. 35. which is *Des Diſmes Infeodes*, Concerning the Infudation of Tythes, he had endeavoureth to overthrow the received opinion. The maine reaſon he urgeth (as farre as I conceive him) is for that thoſe who firſt and anciently wrote the hiſtore of their Kings, or otherwiſe took notice of the Acts of *Charles*, do not accuſe him of any ſuch Infeudations. But to this I ſuppoſe ſome anſwer may be conceived in this manner.

The principall Hiſtoriographer of whom we are to conſider in this caſe muſt be *Aimoine*, who wrote the Storie of the *French* Kings, and what was delivered in his Chronicle concerning the times we aime at, for the moſt part, made up the Books of thoſe Writers that ſucceeded, for ſome certain centuries of yeares, This *Aimoine* (*Stephen* ſaith) maketh no mention of that Act of *Martel*: tis true, neither maketh he mention of any Sacriledge at all, no not ſo much a *Stephen* himſelfe, and all Writers believe that *Martel* was guiltie of: And I ſhould wonder if he had, for *Aimoine* lived in the time of *Charles* the great, and what he wrote concerning him and his anceſtors, he received from *Autmare* Chaplaine to the ſame *Charles* and this is too neer the time of *Martel* for a true Hiſtorian. Indeed the lives of pious Princes may be written before their deaths, and if there happen an unworthy paſſage, it is not corrected in their Storie, but their Converſation: But when a great King proves not good, his firſt Hiſtorians muſt be worſe, for no ſubject may dare to write what ſuch a Soveraigne could commit. And therefore if an ill Act occurre, the Hiſtorian muſt diſſemble or defend it; for what e're be after thought of great mens actions, yet when they are newly done, either they muſt not be mentioned, or if they be, they muſt be magnified. Therefore *Autmare*, who depended upon *Charles* the Great, muſt not tell ſuch tales of his Grandfather. And for this cauſe it is, that when

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Aimoine ſpeakes of *Martel*, he ſtyles him *virum ſagaciſſimum*, *virum egregium*, adding moreover that his atchievements were accomplished *Chriſto in omnibus præſide*: See *lib.* 4. *c.* 57. where alſo relating his victories, he compareth the ſiege of *Avignon* to that of *Iericho*, as if *Charles* had marcht on like thoſe great Commanders of *Iſrael*, and the wals of *Avignon* had fallen down like thoſe of *Iericho* at the ſound of *Mortels* Trumpets. Thus *Aimoine* obſerves the times he lived in. So *Boniface* Archbiſhop of *Mentz* in *Martels* dayes, though perhaps he could have ſaid more then he did, if that be not enough which he hath ſaid, that this *Charles* was *Eccleſiaſticarum pecuniarum in proprios uſus commutator*; yet that which he did ſay ſeemeth to have been no etherwiſe publickly known then in an epiſtle of his to *Ethelbald* one of our *Mercian*-Kings, a fragment whereof is incerted in the Storie of this *Ethelbald* by *William* of *Malmsburie*; but in other Copies of this Epiſtle, the clauſe which concernes *Martel* occures not for of late dayes, by the great induſtrie of *Sirarius*, we come to ſee a volume of that Archbiſhops Epiſtles; the ninteenth whereof is that which was directed to *Ethelbald*. But there the paſſage of *Martel* cannot be found. And the truth muſt be, that if *Boniface* have any ſuch thing to ſay of *Charles*, he muſt ſend it far enough, for it might not be told at home.

That which hath been ſaid may paſſe for a reaſon, why ſo great a crime as *Martel* was not ſo publikly recorded till time could weare out the danger, and the Hiſtorian could write the Act with as much confidence and ſecuritie as *Martell* did it. Therefore it is, that though the Writers began betimes to touch at this impietie, yet they ſtruck not at this maſter piece but by degrees.

Paulus Æmilius, a diligent writer, and one that ſpent thirtie yeers to compile the *French* Storie, ſeemeth even in thoſe dayes to report this timorouſly as if it had been then two ſoon to give a juſt account of this Sacriledge. For when he commeth to *Charles Martel* he ſaith that there paſſed upon him a diverſe rumour, For ſome gave out *Eum omnium Ducum Imperatorumque gloriam tranſcendiſſe*, that he had tranſcended the renoune of all Kings and Captaines that ever were before him. Others reported, that he had *decumarum ſacrum jus militaribus viris attribuiſſe*, given over the divine right of Tythes to his militarie men. But it is neceſſarie for the Reader for the Reader to obſerve, that the Authors of the firſt report were, as *Paul* ſaith, *Summi viri* great

…, but thoſe that related the ſecond were *Sancti viri* good men, …the firſt ſort may, but the latter ought to be believed. But we …find this matter more confidently related by the *French* Hiſtori…, who ſpare not to ſet it down plainely and ingeniouſly, though it …concerne their ſtorie more then others that this *Martel* ſhould be …eleſſe.

An ancient Chronicle of theirs *Le Rozier Hiſtoriall de France part. 2.* …cerning this paſſage ſaith thus, *Par le conſeil des Eueſques luy furent …ez les diſmes des Egliſes pour gaiger ſes chevaliens, qu'il promiſt …re & faire de plus grani bien a l' Egliſe s'il vivoit longuement. Fol:* …he ſaith that *Charles* did beſtow the Church Tythes upon his …ghts, and that he promiſed to reſtore them again, and much more; …this muſt be *s'il vivoit longuement*, if he lived long enough. How …*Charles* would have lived to do this, I know not, but that he …not ſo long as to ſee it done, we are ſure enough. The like is …orted concerning this paſſage, by *Fich. Giles*, but becauſe this Au…hath been corrected and enlarged by *Belleforeſt*, we ſhall uſe his …rds and they are theſe, *Pour fournir aux fraits & diſpenſes qa'il …uoit faire pour leſdictes querres que ledict Charles Martel avoit con…les Sarazins ennemis de la Chreſtiente ledict Charles Martel par le …ſeil des Princes donna & boilla aucunes des diſmes que tenoyent les …gliſes a ſes gens d' armes moyenant qu'il promit que ſi Dieu luy donnoit …y grace de venir au deſſus des dictes Sarazinc il les reſtitueroit & …s grands biens y donneroit, &c.* ſee that which followeth in the …thor. The ſame is the relation of *Du Tillet*, *On feinct qu'l eſt damne …enfer pource qu'il eſt damne en enter pource qu'il print quelque partie …s diſmes pour aucunement ſatis faire aux Nobles, &c.* Thus alſo …ſieur *Du Haillan* *Il donna les diſmes*, He gave the Tythes (to his …bles and he promiſed to reſtore them again; but *Du Haillan* addeth …*qu'l ne peut toutefois faire comme il avoit promis.* To the ſame pur…poſe *Fauchet* in his *Antiquites & Hiſtories Gauloiſes. Liure iinquiſme,* …*chitre* 21. *Leur oſtant une partie des diſmes pour advantuger la Nobleſſe …ſa partie*: yet he ſaith, there were that would excuſe this, *diſans …ce fut pour s' ayder en la neceſſitie des guerres qu'il eut contre les …Sarazins.* This indeed may ſerve to excuſe him for taking the Tythes, …it yeilds no pretence for his not reſtoring of them. And becauſe …is below the Sacriledge to admit of any excuſe therefore *Charles* his …great friend *Duplex* ventures to defend it. This *Duplex* was a later

writer

writer then the reſt, and one that hopeth to be accounted a better
it ſeemeth by the cenſure, which in his Preface he paſſeth upon th
who wrote before him. But let us here what he ſaith in defence
Martel: *D' ailleurs ils furent encore plus offenſes de ce qu' apres la jour
de Tour.* (ſo the *French* call this expedition of *Charles*) *il oecompa
la Nobleſſe de partie des diſmes du Clerge avec promeſſe de reſtitu
delaquelle depuis il ne tint compte. Mais en cela l' ingratitude & l' a
rice du Clerge eſt plus blaſmable que l' enterpriſe de Charles Car n' e
il pas raiſonnable que ceux qui appres beucoup de deſpence avoient ex
ſi genereuſement leur vie pour la defenſe de l Epliſe fuſſent recompen
quelque petit portion du revenu d' icelle? &c.* He granteth the paſſage
ſaith he in this the ingratitude and avarice of the Clergie is more
blamed, then the enterpriſe of *Charles*, for was it not good reaſon
thoſe who beſide their coſt & charge, had ſo generouſly hazarded
lives for the defence of the Church, ſhould be rewarded with
ſmall portion of the revenue thereof? &c. We anſwer, that the
ſigne it ſelfe was truely honourable, but for *Charles* to free the
from a forraigne Foe, and be a Barbarian himſelfe at home, make
atchievement very improper, and utterly darkens the reputation
great a Conqueſt.

Thus we ſee, that it is generally believed by the *French* Writers
later times, that their *Martel* diſtributed the Church Tythes to
men of warre, and without reſtitution. And if it be asked, from
head theſe moderne Hiſtoriographers could deduce that paſſ
whereof the ancient had made no mention; it may be replyed,
though this were not publickly recorded by the old writers *Ai*
and the reſt, yet it might remaine in the Notes of private men,
being delivered from hand to hand, might be reſerved for ſuch a
as could endure the relation.

But *Stephen Paſquier* ſaith that the Centuratours of *Magdeburg*
ferre him to the 2. Tome of the Councells or a Synod holden un
Carloman, where amongſt other Canons, this was one, *Decimas ec
patas à prophanis reſtituimus*: And if this be true he granteth all.
y auroit pas grande difficulte pour ciſte opinion: But he addeth more
that after dilligent ſearch made both for the Synod and this Can
he could find no ſuch thing in all the 4. Tomes of the councels.
that he ſearched for that very Canon and found it not, he deſerve
loſt his labour, for taking no more heed what the Centuriators
dow

lown, for they referred him not to theſe words of the Canon, but to this Councel in other words; but hee ſaith, he could find no ſuch Councell, no not in all the 4. Tomes, but he muſt needs be deceived, for this Synod is not onely extant amongſt thoſe 4. Tomes, but alſo in all the foure editions of the Councel. The 2. tome of the Councels to which he is referred by the Centuriators, is the 2. of that edition which was ſet forth at *Colen*, in the yeare 1538. & in this Tome is found that Synod under *Carloman*, though otherwiſe it muſt be looked for in the 3. Tome of the Edition of *Benius*, *Surius*, & that of *Venice*. The 4. Tomes he ſpeaketh of, are thoſe of *Binius*, & there he ſaith, he cannot find this Synod. But he deceived himſelfe in this manner. In the Edition at *Colen*, the Synod is ſaid to be held under ſome *French* Biſhops, therefore the Centuriators might call it *Synodus Francica*, and ſo it was ſtyled afterwards in the Edition of *Surius*, and that of *Venice*: But in the Edition of *Binius*, this Councell goeth under the name of *Ratisbinenſe*, or *Auguſta vendelicorum*, and by this meanes *Stephen Paſquier* reading nothing but the Titles, came away with a *Non inventus eſt*. Therefore the Councel is extant. As for the Canon though it be not ſet down there in the ſame ſence (which is the moſt that can be ſayd) yet it is plainely expreſt by *Aventine*, from whom the Centuriators have it, and there the Canon is *Decimas, bona Eccleſiaſtica occupata a prophanis reſtituimus lib.* 3. *pag.* 216. *Edit. Baſ.* 1580. If *Aventine* were deceived it need not be for want of judgement, and it could not be for want of care, for the paines he took collect thoſe Annals, were prodigious and incomparable. *Multa* (ſaith he in his Preface) *tuli, feci, adivi. & alſi, totam Boioariam perluſtravi, omnia Contubernia Sacerdotum penetravi, ſcrinia, publicas Bibliothecas omnes curioſius perſcrutatus ſum, libellos, codicillos donaria, Commentarios, teſtes, Annales omnium gentium, diplomata, inſtrumenta, publica & privata evolvi: Signa aera, lapides, trophæa, epigrammata ſepulchrorum, picturas, inſcriptiones, tumulos, templa, omnia denique Antiquitatis monumenta exploravi, &c.* and all after al this care, *Aventine* ſhould not finde out the true copies, or not be able to diſtinguiſh them from the falſe, it is altogether incredibile.

Therefore notwithſtanding what *Stephen* hath ſaid, it may ſeem very reaſonable that wee believe *Charles Martel* to be the Author of the forenamed *Infœdations*, and that this is not without probability, ſeeing even himſelfe confeſſeth, where he ſaith: *A laver té ceux qui ont eſté eſté aduis ne ſont denuez de bien grand pretexte.*

However if theſe infeudations had not their Originall from *Charles* (as they ſeem to have had) yet tis impoſſible they ſhould begin where *Stephen* hath appointed, as it is obſerved by a moſt learned Writer of our own. *Cap. 6.* of his *Hiſt. of Tythes pag.* 112.

The great opinion which hath been alwaies had of *Steven Paſquier's* learning, where are moſt ready to acknowledge; but to abate any prejudice that may ariſe from this, we have reſerved to compare with him two of his own Country-men; the one is *Fileſacus*, a moſt learned divine of *Paris*; the other is *Gregorie*, a great Civilian of *Tholous*, either of theſe may be thought equall to *Steven* in learning, but they are both different from him in this opinion. *Gregorie of Tholous* in his *Sytag. Iuris, &c. lib. 2. cap. 25. num. 7. pag. 50. Edit. Francofurt.* 1611. where he believingly reporteth this matter of *Martel* out of *Gaguin* and *Æmilius*; and having paſſed the Storie he accepteth also the viſion of *Euchre*. His owne judgement of both he delivereth in theſe termes: *Quod in ultionem tantæ uſurpationis videtur accidiſſe, & ob ſacrilegium Eccleſiæ illatum, cum nullus princeps, Rex, vel Imperator has decimas uſurpare, minuſque aliis concedere Laicis poſſit &c.* So *Gregorie*. To the ſame purpoſe *Fileſacus* in his *Querela Eccleſiæ Gallicanæ*, where, though he giveth us to underſtand, that there were Church robbers before the dayes of *Martel*, and that in this, *Pipin* gave example to the *French*, yet in all the Sacriledge he giveth *Charles* the preheminence. And concerning the matter of Tythes thus he relateth out of his old manuſcript Chronicle, *Charolus propter aſſiduam bellicam decimas & quaſdam alias res Eccleſiaſticas Laicis conceſſit &c.* and having conſidered both of the Storie and the viſion, he giveth this approbation, *Scripſit hoc P. Æmilius lib. 2. Hiſt. Franc, priſcorum credo noſtrorum annalium fide. Purpuratus Scriptor Eccleſiaſticæ Hiſtoriæ pro Martello contra Æmilium & ſimiles dixit.* you may imagine his minde, I think he meaneth *Baronius*. Therefore ſee the Cardinals unwarie opinion of *Charles Martel* at the yeare of Chriſt 741.

It remaineth to ſet down what we have to ſay concerning that viſion of *Evchere*, to whom it was ſhewed that *Charles Martell* was in Hell.

It was ſtrange indeed that thoſe inconceivable tortures of the damned could be made fantaſticall, and that which cannot be feined ſhould be ſeen in a viſion: yet we may not think theſe latter times ſo incapable of a wonder, as not to admit of ſome thing that is ſtrange, we need no go farre back for a prodigie; what think we of the Scar-

need

Caſſiopea, which ſhewed it ſelf in the yeare 1572. and the men are yet a live who ſaw it. An ordinarie ſtarre it muſt not be for the country Hinds had ſpy'd it firſt, and brought the newes to *Tycho*: a fixed Starre it could not be, for ſuch as thoſe are above a twelve-moneth ſtanding: that it ſhould be a Comet, it cannot be granted, at leaſtwiſe not one of *Ariſtotles*, for all thoſe are placed below the Moon, but this Meteor ſublimated above all planetarie Orbes, as it is evident by the uncontrolable doctrine of the Parallaxe: Or if we could ſuppoſe a Comet that were not ſublunarie, yet neither could this be ſuch a one, for all theſe muſt be raiſed out of terreſtiall matter; but if the whole earth hath ſpent it ſelfe into one exhalation, it would have come farre ſhort of making up ſo vaſt a body, as this Starre muſt be, which exceeded thoſe of the greateſt magnitude, notwithſtanding that the *Earth* is exceeded by thoſe of the firſt. So long as the Starre appeared; no man could ſay that the world wanted a wonder, and if we admit ſuch things in the Celeſtiall bodies, why ſhould we exclude the inferiour world. Indeed if we be told by the Metaphraſt, that the Crow ſtood and mourned over the dead Corps of S. *Vincent*, or that S. *Denis* after his neck was cut off, ſhould run away with his head in his hand, we make no ſuch haſt to believe it, yet thus much faith we have, that the blood of Saints is ſo precious in the eyes of God, that a Martyr indeed, ſeldome goeth off without a miracle. True it is, that matters of this nature were moſt frequent in the primitive times, yet if we ſhould admit nothing of this kind without Chriſt or an Apoſtle, all Stories would be Legends, and almoſt every diſcourſe too ſtrange to be true. But it ſeemeth very convenient for the ſatisfaction of reaſonable Creatures, that theſe things ſhould be ſo, for if God did not ſometimes interrupt the common courſe, we ſhould dote upon the ordinarie means, and begin to think that nature had no ſupreamer cauſe then it ſelfe. If the Storie of this viſion ſhould not be true (we will not ſay in every circumſtance for we have promiſed to doubt of the damnation of *Charles*, yet I ſay, if ſomething like to this hath not been) then what ſhall be thought of all thoſe ancient teſtimonies of grave and learned men, who are engaged to make this good. To let paſſe the reſt, what ſhall we think of the Relation of *Fhuchet*, that a Chronologer ſhould ſay, *Que de ſon temps pluſi urs gens l' aſſeurcyent comme eux eſte preſens à la viſitation de ladite ſepulture & les Eveſques des Provinces, de Rheimos & Rouen aſſemblez en un parlement tenu l' an*

buit cens cinquante huit l' alleguerent pour exemple a Louyis Roy de Germanie comme hiſtorie veritable adjouſtans que Charles eſtoit damne.

That we may know what *Fauchet* ſaith, we muſt obſerve, that in the yeare 858. the Biſhops that then were of *Rhemes* and *Roan* were ſummoned to a Councel by *Lewis* the third, but fearing (for good cauſes) what the ſucceſſe might be, they apeared not, nevertheleſſe they wrote an Epiſtle to the Emperour, where, amongſt other matters, adviſing him to vindicate the Church, they peremptorily alleadged the damnation of *Martel*, and that when he was look't for in his grave by *Boniface* and *Fulrade*, he could not be found, but that inſtead of him there iſſued forth a fearfull Dragon, leaving the place all black, as if it had been burn'd. And that the Emperour might make no doubt, they enforce the credit of the Storie with this undeniable teſtimonie. *Nos autem illos vidimus (nempe Bonifacium & Fulradum) qui ad noſtra uſque ætatem duraverunt, & nobis viva voce veraciter ſunt teſtati quæ audierunt & viderunt.* The entire Epiſtle is extant, and the preſervation of it we owe to to the learned *Baronius*, in whoſe Annals we may finde it *Ad annum Chriſti* 858. So much of it as conerned the Storie of *Martel*, was cited by *Gracian* 16. *q.* 1. *poſt Can.* 59. It is alſo related by *Marianus Scotus ad annum Chriſti* 764. but not to be look't for in the printed Copies, for we read it in a manuſcript of our publike Librarie, which hath much more of *Marian* to ſhew then ever yet came forth, for it exceedeth thoſe that are printed by a third part, and (which is more to be noted by us) it is conſtantly interpoſed with the Synchroniſmes of our own Storie. Yet it would be enquired whether *Marian* be author of all that he is there entituled to, becauſe at the yeare 1054. pag. 351. the manuſcript ſaith thus, *Eodem anno natus eſt Marianus Hibernenſis probabilis Scottus, cujus ſtudio & labore hoc Chronicon præcellens eſt de diverſis libris coadunatum.*

The *French* Hiſtorians, for the moſt part, diſparage this viſion for feare of *Martels* damnation, yet *Nichol. Gills* in *Belleforeſt* relating the Storie, concludeth it with a ſober demurre, *Mais ce qu'il en eſt je ne ſcay rien ceſt à dire a le ſcavoir:* But, ſaith he, what to think of this I cannot tell, God he knoweth.

But of *Charles Martel* thus farre, this only may briefly and confidently be added, That as he came improperly into the world, ſo he went unuſually out; for he was borne a Baſtard and dyed miſerably.

very

ry victorious man, and valiant Captaine) op-
ſe himſelfe againſt them, unleſſe the under-
rgie of *France* would be content to reſigne every
n his Tythes into his hands, that thereby he
ght reward the Souldiers, and ſupport the char-
s of the warre, then preſent: which the poore
rgie in reſpect of the eminent danger, and for
t *Charles Martel* himſelfe did ſolemnly vow and
romiſe, that the ſhould be forborne no longer,
en for the time of the warre, and that they
ould be reſtored unto them againe at the end of
warre with a further gratuitie for their good
ll yeilded moſt willingly thereunto, ſpecially the
ſhops not contradicting it, leaving to themſelves
ſmall portion of their living onely, during the
e of the danger whereupon *Charles Martel* un-
rtaking the enterpriſe, got a mighty great victory
ainſt the enemies inſomuch that he ſlew in one
ttel 34500. of the Infidels: which bell being hap-
y atchieved, and the danger of the warre being
t, the poor Clergie-men hoping to receive again
ir Tyths, according as it was promiſed them by
arles Martell, they were put from the poſſeſſion
reof, and ſay or do what they could, their bene-
es were divided before their face, in recompence
their ſervice, to ſuch of the Nobilitie as had
one valiantly in that action, and the ſame aſſured
them and theirs for ever in fee. And this is the
ſt violence that ever tythes ſuffred in this Chriſti-
n world, after they left the Land of *Jurie*, and
d came to inhabite among the Chriſtians: which
lbeit was a nefarious act, and nothing anſwerable

to the late mercie that God had vouchſafed th
in conquering of their enemies yet there wan
like ſacrilegious minds in all Chriſtian Lands, wh
did imitate this wicked fact of *Martellus*, inſom
as the example hereof paſſed over the *Alpes* in
Itallie, and mounted above the *Pyrenæan* Hils in
Spaine, and within a ſhort time after ſayled ov
into *England*, in ſuch ſort that even to this d
ſundry monuments appeare every where in t
Land, where any title of immunitie is any wh
challenged from payment of Tythes, reaching b
yond the *Lateran* Councel which can deſcend fr
no other head, then from that fact of *Ch*
Martel; neither was there any redreſſe ther
untill the ſaid *Lateran* Councel before mentio
which notwithſtanding came neer five hund
and threeſcore yeares after the Nativitie of our S
viour Jeſus Chriſt; but the Councell that re
med it, and was holden under *Alexander* the t
was not celebrated before the yeare of the inca
tion 1189. neither was the reformation there
that time totall, nor ſuitable to the firſt inſtit
of Tyth among Chriſtians.

For neither could many willfull or refractari
perſons be then brought to obey the Canons
the Councell in reſtoring any part thereof ag
unto the Church, although they were charged
to do under paine of * damnation. Neither did

* Irreligious people have alway been ſo backward to do the Church this great right, that they have been oftentimes o taken with the curſes both of God and Men. Severall *anathema's* o of Severall Synods might be urged, but the moſt notable proceed againſt this Sacrilege may be found in the *Generall ſentence* of E cration, denounced four times a yeare. ſomething to this purpoſe w

before *Chap.* 2. *Sect.* 1. out of an ancient book which I have, here thoſe Church robbers are branded with the More and the leſſe Curſes.

It remaineth, that in this place we declare that matter more fully of the Engliſh Feſtivall and out of the Articles of the Generall ter Curſe, found in S. *Pauls* Church at *Canterbury*, in the 1562. according as it is related by *Thomas Becon*, in the Reliques Rome. And firſt we will obſerve what our Anceſtours underſtood theſe kinds of Execrations, and what was their More and leſſe ſe. The Feſtivall ſaith, that Curſing is ſuch a vengence-ing, that it departeth a man from the bliſſe of Heaven, houſel, ſhrift, & all the Sacraments of holy Church. betaketh him to the Devill, and to the paines of Hell out end: The *Canterbury* Book ſaith thus: Wherefore ſhullen underſtand at the begining, that this word Curſe thus much to ſay, as departing from God and all good ds. Of two manner of Curſing holy Church telleth, one is cleped the Laſſe Curſe, the other is cleped the re Curſe: That we clepen the laſſe Curſe is of this ngth that every man & woman that falleth therein, it arteth him from all the Sacraments that been in holy urch that they may none of them receiue till they bee ſoyled, &c. The More Curſe is much worſe, and is of this ength, for to depart a man from God, and from all the y Church, and alſo from the company of all Chriſten e neber to be ſaved by the paſaion of Chriſt, ne to be ed by the daſsion of Chriſt, ne to be holpen by the Sa-ments that been done in holy Church, ne to have part ith any Chriſten man, &c.

Concerning thoſe that debarre the Church of any rights or whatſoever, the Prieſt in the Feſtivall pronounceth thus: the outhority of God, the Sonne, and the Holy Ghoſt, his glorious Mother and mayden our Lady Saint Mary,

and the blessed Apostles Peter and Paul, and all Apostl
Martyrs, Confessours, and Virgins and the halowes of
I denounce and shew for accursed al thoe that franche
holy Church breake, or distrouble or bene against the
of holy Church, or thereto assent with deed or coun
And also all thoe that priebe holy Church of any righ
make of holy Church any Laysee that is halowed or sa
fied. And all thoe that withold the rights of holy Church,
is to say, offerings, tythes, rents or freedomes of holy Ch
let or distronble, or break, that is to say, if any man sle
the Church or Church-yard, who so him outdraweth, an
thoe that thereto procure or assent. And althoe that
chasen letters of any Lordys Court, that processe of
may not be determined or ended. And the *Canterbury*
saith: all thoe been accursed, that purchasen writes or
ters of any leud Court, or to let the processe of the La
holy Church of causes that longen skilfully unto Ch
Court, the which shuld not be demed by none other law,
And oll that malicyously biriben holy church of her righ
maken holy church Lay-fee, that is, halowed and bl
And also all thoe that for malice or wrath of Person, W
or Priest, or of any other, or for wrongfull covetyse of
selfe with-holden rightfull Tythes and offerings, rent
mortuarys from her own Parish church, and by way o
vetyse falselythe againe to God the worse, and to hem
the better, or else turne them into an other use, than
oweth, or done hem in other place after their own wil
that they be not one to the same place that they should
let by word or by deed any man or woman for to do he
will & her devotion to God, and to holy church. For al
sten men & women been hard bound upon pain of dead
not onliche by the ordinance of man, but both in the old

alſo in the new Law for to pay truliche to God and holy
urch, the tyth part of all manner of increaſe that they
nen truliche by the grace of God, both with her travell
alſo with her crafts, whatſo they be truly gotten. Alſo
tyth part of all manner of fiſhes, and foules, and beaſts
wild and tame. And all manner of fruites that growen
of the earth. Alſo all that wittingly or wilfully tythen
y, that is to ſay, that giben not to God and holy church
tenth part of every wynning leefully wonnen in mer-
diſe, or in any other crafts withdrawen only that ex-
e and the coſtage that needfully muſt be made about the
g, whereof the winning is getten, not tything the win-
of one marchandiſe with the loſſe of an other. And all
that of the fruite of the earth, or of beaſt or of any thing
neweth in the yeare, giben not the tythe wholy with-
n any coſtage. All thoe that falſly tythen taken to God
worſe, and holden the better to her own profit, againſt
ordinance of Boniface ſometime the Archbyſhop of Can-
bory: by the which ordinance throughout the Province
Cantorbury ſhuld be one manuer axing tythes in this
nner wiſe. Of all manner of frutes of eazbis, of gardens
houten any manner of coſt abating: of hey wherever it
weth, in great medes or in ſmale as oft as it neweth: of
ing of all manuer of begeal, of calfe, or of lamb from
beu upward into the tenth: and fro fif downward for
y of hem an halfe penny: but if the Perſon or Vicarye
l abyd another yeare, and tell thilk that leeben, and take
other beaſt that followeth: of wool that is woxen, of fellis
purification of our Lady; of milk all the while it dureth,
well in winter as in Sommer, but if they do gree there-
to the perſon, or to the Vicazy for the profit of the
y church. Of fiſhing of fouleing, of beneſon, of been

of

of all other good rightfully wonnen, that newen by the yeare of profit of mills and weris, of fishing no cost abate but the very balue shall the tythe be stayd: of lesewys, commun[illegible] severalls, shall the tyth truly che be payd, after the num[illegible] ofthe beescis, or the days as it is most profit to holy Church, all werkemen, and chapmen that wynnen on her crafts, and on her marchandise shulen trulyche pay her tyth to God and to holy Church. Also Carpenters, and Smiths [illegible] weris, and all other crafty men, and all other hired men and wimen shuleu Tythen of all they getten but if they wolle give any certaine thereof to holy Church at the Persons or Vicars will. Also of fowle, of Calves, of Piggs of Gees, of Henues, of Flax, of Hempe, of Corne and of all thing that neweth by the yeare. Alsoe of shryding of Trees, and of all manner of underwood woxin or hewed. Also men of holy Church moune curse by name hem that wolen not pay her Tythes as it is written in many places of the law of holy Church.

At the repeating of these Articles, the Prelate standeth in the Pulpit in his Albe, the Crosse being lifted up, and the candles lighted. After the Repetition, these or the like formall Words of Execration are denounced. *Ex Authoritate Dei Patris Omnipotentis beatæ Mariæ Virginis & omnium Sanctorum, excommunicamus, anathematizamus & Diabolo commindamus omnes supradictos malefactores. Excommunicati sunt, anathematizati, & Diabolo commendati; Maledicti sunt in villis, in campis, in viis, in semitis, in dumibus extra domos, & in omnibus aliis locis, stando, jacendo, surgèndo, ambulando, currendo, vigilando, dormiendo, commedendo, bibendo, & aliud opus faciendo:* Or as the *Caterbury* Book saith: But thorow authoritie of our Lord God Almighcy, and our Lady S. Mary, and all Saints of Heaven, of Angels, or Archangels, Patriarches, ano Prophets, Evangellsts, Apostles, Martys, Confessors and Virgins, also by the power of all holy Churh, that our Lord Jesu Christ

gave

ube to S. Peter, we denounce all thoſe accurſed that we habe thuſ reckned to you: and all thoe that maintaine hem in her ſins, oꝛ giben hem hereto either helpe oꝛ councell ſo that they be departed from God and all holy Church, and that they habe noe of the paſsion of our Lorꝺ Jeſu Chriſt, ne of no Sacraments that been in holy Church, ne noe part of the prayers amon chriſten folke, but that they be accurſed of Goꝺ and of holy Church from the ſool of their foot unto the crown of their head, ſleaping and waking, ſitting and ſtanding in all her words, and in all her workes, and but if they habe grace of God for to amend hem here in this life, for to ꝺwell in the pain of hell for ever withouten end(*Fiat, Fiat*) Doe to the Book, Quench the Candle, Ring the Bell: Amen, Amen.

This Generall Sentence was ſolemnely thundered out once every Quarter, that is (as my old book ſaith) the fyrſt Sunday of Adbent at coming of our Lorꝺ Jheſu Eryſt the Sunday of Leenten. The Sonday the Feſte of the Trynyte, and the Sunday with in the utus (octaves we ſay) of the bleſſed Mygin our Lady S. Mary.

Thus much we have ſet down concerning the Generall Curſe, not hoping to fright any man into devotion with this (black Sentence) or to propoſe ſuch diſtempred pietie for an example. but that it might be conſidered how horrible a crime it was in our Forefathers account to rob the Church in the leaſt particular. And indeed they conceived no more hope of a man that dyed under this *Damnoſum Theta*, then of him that dyed in a mortall ſin, nay much leſſe; for the *Canterbury* Book, ſaith that many Clerks preben at the day of dumme unto our Lady Saint Mary, and Saint John Baptiſt, and all Saints that been in beaben kneele down at once before the bleſſed face of Almigbty God they ſhulen not in that time ſorow the prayer of them all deliber the Soule of man oꝛ woman that ꝺyeth in deadly ſinne, &c. And if the day of dumme

dumme ſhall be ſo heard to althoe that dye in any deadly ſin by all reaſon full myrhe harder ſhall it be at that time with all thoſe that be founden openly curſed of God and holy Church, &c.

Thus we ſee what furies followed this Sacriledge in the opinion of our Forefathers, who were ſo confident that a Church robber could not eſcape the Judgement of God, that they delivered him over to Satan, or as they ſay, curſed him whith the **Moze**, and with the **Leſſe Curſe**, with Bell, Book, and Candle.

The Clergie of the preſent time gives better language than thou what cauſe they may have, I will not ſay: It may be accounted ſome wiſedome, that their injuries cannot be judged by their clamours, ye the Ages to come muſt not ſay, that theſe things were done *Nobis dormientibus*. The experience of the Emperours *Charles* the Great, and *Lewis* the Godly would be noted to this purpoſe out of their *Capitulars*: *Novimus* (ſay they) *multa Regna & Reges eorum propterea cecidiſſe. quia Eccleſias ſpolia verunt reſque earum vaſta verunt, abſtulerunt, aliena verunt, vel diripuerunt Epiſcopiſque & Sacerdotibus, atque* (*quod magis eſt*) *Eccleſiis eorum abſtulerunt & pugnantibus dederunt; qua propter nec fortes in bello nec in fide ſtabiles fuerunt, nec victores extiterunt ſed terga, multi vulnerati, & plures interfecti veterunt regnaque, & regionem, & (quod pejus eſt) regna cœleſtia perdiderant, atque propriis hæreditatibus caruerunt & hactenus carent.* So they in the 7. Book of the *Capitul. a.* 104. *fol.* 214. *Edit. Pariſ.* 1603. Whereas the *Capitular* attribuieth thoſe grand enormities, and their ill ſucceſſe to the Kings of that time, it is not now to be underſtood. Farre be it ever from us to think otherwiſe then divinely of thoſe our moſt religious Princes, by whoſe gratious protection the Church hath been of late ſo miraculously bleſt. As for others among us, they may apply this to themſelves as they ſhall be troubled with cauſe and occaſion. The great Impoſtor in this *Alcoran*, though he cozoned all the world beſides, yet he would not defraud the Church. *De Decimis ſume*, ſaith he, *& inde ſecundum morem conſuetum operare, Inſciis te ſubtrahe ſemper.* So our *Robert* of *Reading* tranſlateth: But he that reads *Roberts* Tranſlation, muſt not always think he reads the *Alcoran*. The Prophets own text is in סורת אראעואף *Surato laaraph*, (which in our manuſcript *Alcorans* is the 8. *c.* and the 17. in *Roberts* Tranſlation)

ואמר באלעדף ועדצען אלנאהלין that is, Give command
cerning Tythes, and beware of Clownes: the word עדף may be
herwiſe underſtood; but if this were not *Mahumets* meaning
e matter is not great, for wo have better Prophets to preach this
ſtrine.

ſuch as did then reſtore them to the Churches
m whence they are taken, which had been moſt
reeable to the ordinance of the Church, ſet
wn by *Dionyſius*, who firſt divided Pariſhes and
gned them Tythes as hath been aforeſaid; and
o the Scripture it ſelfe, *Dut.* 18. from whence
onyſius took his light to divide Pariſhes and diſ-
e of Tythes as he did, by which it was not law-
l for him that paid his Tythes to pay them to
e Prieſt or Levite that dwelt in the place
here himſelfe made his abode: but yet this liber-
e that was given them by the Councell, then gave
uſe unto the errour that the Common Lawyers
old at this day (not knowiug the ancient pro-
edings of the Church in theſe caſes) that before
e *Lateran* Councell, it was lawfull to every man
give his Tythes to what Church he would,
hich was ſo farre otherwiſe, as that before this
iolence offered unto the Church, there was a flat
anon, more Ancient then the fact of *Charles*
artellus, which did preciſely forbid any man to
y or the Biſhop to give leave to any man to pay
e Tythes from the * baptiſmall Church to an

Leo 4. 13. *q.* 1. *c. Eccl.*

*The Rites of Baptiſme in the primitive times were performed in Rivers and Fountaines, where the perſons to be baptized ſtood up and received that Sacrament; therefore it is that the Sonne of *Azalkefat* in the *Arabick* Goſpels uſeth the word עמד *Amada* to baptize; which word alſo beareth the ſame ſence

ſence in the *Syriack*, and is often mentioned by *Patriarck Severus* his מכסא דעמדא קדישא. Τάξις or order of babtizing the Saints. The reaſon in both Dialects is the ſame, for that the word *Amada* in the *Syrians* and *Arabians*, derived from the *Hebrew Amad*, which ſignifieth to ſtand up. This manner of baptizing the ancient Church entertained from the example of our Saviour who baptized *Iohn* in *Iordan*. And ſome ſay that this was very tolerable in thoſe Eaſtern parts; but certaine it is, that it was moſt convenient for that time becauſe their Converts were many, and men of yeares. A reaſon alſo may be, for that thoſe ages were otherwiſe unprovided of Fonts and coveniences which are now in uſe: and this hath been a cauſe, why this manner of baptizing was reſumed in after-times, and other places for our venerable *Bede* telleth us of ſome that were baptized here in *England* in the River *Swale*, which runneth through a part of *York-Shire*, in the *North-riding*, and he giveth the ſame reaſon: *Nondum enim Oratoria vel Baptiſteria in ipſo exordio naſcentes ibi Eccleſia poterat adificari Eccleſiaſt. hiſt. lib. 2. cap. 14.*

The days we now live in have no other remainder of this Rite of Baaptizing in Rivers and Fountains, then the very name; for hence it is that we call our veſſels that containe the water of Baptiſme Fonts, or Fountaines.

This cuſtome of Baptizing in Rivers and Fountaines being diſcontinued, Fonts were erected in private houſes; but the violent perſecutions of thoſe times barr'd the Chriſtians of that coveniencе, therefore their next recourſe was to woods and devious places, and there they accommodated themſelves with ſuch Baptiſterialls as they could. In more peaceable ages they drew nearer, and made bold to build their fonts a little diſtance from the Church; afterwards they obtained that they might be ſet in the Church-porch; and at laſt got them into the Church. But they were not placed in every Church: for at the firſt they were only found in Cities where the Biſhop himſelf reſided and onely in the great Church of ſuch a Citie; and though Service might be ſayd in the leſſer Miniſters and rurall Churches, yet the right of Sepulture and Baptiſme belonged to the Cathedrall Church, and unleſſe it were in caſe of neceſſitie: and it was therefore called the Mother-Church, becauſe that as the people in their Mothers wombe were borne Men, ſo in the Fonts of Baptiſme, as in the Churches wombe, they were borne Chriſtians. In ſucceeding ages, when it was found that the Mother-church was too farre di-

ſtant

at from ſome Villages, and ſo ſituated, that in the Winter time e people could not repaire thither, conſideration was had of this nvenience, and the Biſhop took occaſion from hence to transferre right of Baptiſme and Sepulture to Rurall Churches, and this to- her with the right of Tythes, &c. made it a Parochiall Church, of kind which we now have. But becauſe alſo in many Pariſhes Families liv'd ſo remote from their Church, that they could not veniently frequent it, it was indulged to thoſe, that they might ld themſelves either in or neer their manſion-places a private torie, reſerving for the moſt part, the right of Baptiſme and Se- ture to the Pariſh-Church, which, in reſpect of theſe leſſer Ora- ies, was to be accounted their Baptiſmall and Mother-Church. was alſo provided that theſe Families, notwithſtanding their grant private Oratorie, ſhould on high days repair to their chief Church, it ſeemeth by the Councell held at *Agatha Can.* 31. *Tom.* 1. *Si extra parochias in quibus legitimus eſt, ordinariuſque conventus, rium in agro habere voluerit, reliquis feſtivitatibus ut ibi Miſſas te- t:* (or as *Gratian* hath it the Decree, *Audiat*) *propter fatigationem ilia juxta ordinem permittimus. Paſchate vero, Natali Domini, Epi- nia, Aſcentione Domini, Pentecoſte, & Natali S. Johannis Baptiſtæ;* (*ſi qui maxime dies in feſtivitatibus habeantur*) *non niſi in Civitati- aut Parochiis teneant.* (or as *Gratian* hath it) *audiant.* Thoſe pri- Oratories were afterwards called *Capellas* Chappels, and thoſe in them exerciſed the Miniſteriall function were called *Capellani* plaines. But for the reaſon of the name, ſee *Baronius* upon the *an Martyrologue*, at the 11. of *Iune.* Or if the Cardinall there ſa- not; ſee what *Cujacius* hath obſerved (out of *Heſychius.*) *Ad* 5. *Decretal, C. Capellanus. De Secundis Nuptiis.*

By that which hath been ſaid, it may appeare in ſome ſort, what a baptiſmall Church. And it is agreeable to that which *Linwood* noted upon the Provinciall conſtitution: *Baptiſterium. in verb. tiſmal Eccleſ.* A Baptiſmall Church (ſaith he) is, *Sive Cathedralis, Parochialis viz. quæ habet populum, nam in Eccleſia collegiata vel ventuali quæ non habet populum non debet eſſe Baptiſterium; Dicitur m Eccleſia Baptiſmalis reſpectu Capellarum ſubjectarum, quarum ple- infantes in ea baptizantur, & non in ipſis Capellis immo ad ipſas ſius baptiſmales tanquam matrices pro Baptiſmo recurritur, &c.* Concerning theſe Baptiſmall Churches, the Canon ſaith that there

can

can be but *Una in eadem terminatione cum ſuis Capellis*: *cap. Plures* [illegible] *q.* 1. And the Tythes were of right to be paid to theſe churches, [illegible] evident by the Decree, where *Anaſtaſius* provideth, that no man [illegible] der paine of Excommunication ſhould, *Tenere, aut extra Eccleſi[illegible] Baptiſmalem dare decimas & oblationes Eccleſiæ, quas dare debet pop[illegible]* C. Statuimus eod. tit. And *Leo*, *Non tantum nobis ſed etiam Majori[illegible] noſtris viſum eſt decimus juſto ordine plebibus tantum ubi Sacroſa[illegible] Baptiſmata dantur, debetur dari.* C. *De Decimis ibid.* Yet notwithſ[illegible] ding all the care that could be taken the complaint was *Quidam L[illegible] vel in propriis, vel in beneficiis ſuas habent Baſilicas, & contempta D[illegible] ſcopi diſpoſitione, non ad Eccleſias ubi Baptiſmum, & prædicationem, [illegible] manuum impoſitionem, & alea Chriſti Sacramenta accipiunt, decimas [illegible] dant, ſed vel propriis baſilicis, vel aliis Eccleſiis pro libitu ſuo trib[illegible]* C. *In Sxcris ibid.* What diſtinction of churches our Anceſtours [illegible] and how neer it cometh to that which hath been ſaid, we may [illegible] ſerve out of the Decree made at *Wincheſter* in the Reigne of K[illegible] *Cnute*; where it is provided, that all thoſe that any ways violate [illegible] peace of the Church, ſhould receive a proportionable pen[illegible] Therefore ſaith the Decree *num.* 3. Bete monæþeſt þonne ȝrið bnice into þæn cynican be ðam þe ſeo ðxðe ſy ⁊ be ðe ðæne cynican mæð ſy; Ne ſynð ealle cynican na ȝel[illegible] cne mæþe puplðlice peoꝛðe þeahhiȝ ȝoðcunðlice hab[illegible] halȝunȝe ꝑelice heaꝛoð cynieum ȝniþbnice iſ æt botꝑy[illegible] þum þinȝum be cyninȝeſ munðe: þ iſ, mið ꝑiꝛ punðum [illegible] enȝlalaȝe, ⁊ meðempam mynſcneſ mið 120 ſcill ⁊ þ iſ [illegible] cyninȝeſ pite ⁊ þonne ȝyt læſſan þæplytel þeoþom ſy [illegible] leȝenſtop þþn ſy mið 60 ſcill; ⁊ ꝑelðcynice þæn leȝe[illegible] ſtop ne ſy mið þnittiȝum ſcill: First, let the breaking of t[illegible] Church peace be according to the deed it ſelfe, and according to t[illegible] dignitie of the Church. All Churches have not a like dignitie [illegible] worldly worth, though they have a holy conſecration alike. ȝniþbn[illegible] or peace-breaking in the head Church, hath the ſame puniſhment, [illegible] that of breaking the Kings peace, and that is five pounds by Engl[illegible] Law. In an inferiour Minſter tis 120 ſhillings, and that alſo is t[illegible] Kings mulct: In leſſer field-Churches where there is no buryi[illegible] place, 'tis 30 ſhillings.

Fo[illegible]ry.

How Tythes were to be paid to these Churches, it may be under-
ood by another Decree of the same Parliament, *num.* 11. Gif hpa
nne þegen sy þe on his boclande cyricean hæbbe þe le-
rstop on sy geselle þonne þriddan dæl his agene teo-
nge into his cyricean; Gif hpa cyricean hæbbe þe
gerstop on he sy do he of ðam nigon dælum his pre-
de ꝥ ꝥ he pille ⁊ ga ælc cyricsceat into þa ealdan
ynstre be ælcan frigean heorþe (or eorþe, as it is in
Lawes of *Edgar*, where this decree is also set downe, *num.* 3.(
is, If a Thane have a Church in his bocland, to which there be-
geth a burying place, let him give the third part of his oWn Ty-
g to that Church: if he have a Church Without a burying place,
him give of the nine parts to his Priest that which he will, and let
Cyricsceat go to the elder Minster out of all free-hold.
For that which the Law calleth Bocland, see *Lambard* in the Ex-
ation of words, premised to his *Archatonomia*, where also hee
eth what a Thane is.

er: and that the contrarie was yeelded to in
Lateran Councell, was not that they held it
full to enrich one Church in this sort, with the
overishment of an other, but the cause was the
dnesse of mens hearts, who scarcely could be
n by this favour to restore that little againe
o the Church, that their forefathers had in such
ndance taken away from it: and that the Fa-
rs of the said Councell did yeeld thereunto (al-
ugh it were an inconvenience thus to doe) was,
that they did count, although they did admit
it might bee for the present, yet there
ght bee a better time found out after for
reformation thereof, and so sustained the in-
venience for the present upon this reason; that
universall Church of Christ is one body, and
ry particular Church a part of that body, and

ſo it leſſe mattered to what particular Chur they were reſtored, ſo that they were reſtored all: for that by the reſtitution to one they hop in time they might with more likelihood co unto the other; for thoſe things wherein there an Identie, or like repreſentation of Nature a Condition, as is betweene Church and Churc have an eaſier paſſage the one from the other, th thoſe that are of different nature and diſpoſitio as a lay man and a Church.

SECT. 3.

That out of that violent Preſcription, many o Preſcriptious aroſe, but of leſſe moment.

OUt of the ruines of this violent and preſump ous preſcription, which have now obtai ſtrength of a Statute in the world have iſſued o ſundry petty Preſcriptions, which alſo are co firmed by law and cuſtome, as the other were the Preſcription wherein one Church preſcribe Tythes againſt an other Church, the Law puni ing therein the negligence of the one, and reward the vigilancie of the other: Preſcriptions, whe one Eccleſiaſticall body corporate or politiq preſcribeth Tythes, or other Eccleſiaſticall du againſt the Parſon or Vicar of the Pariſh, and t Parſon and Vicar againe againſt them: A Preſcri tion whereby a Lay man, having no right to p ſcribe Tythes) becauſe he can in no right poſſ Tythes, and preſcription cannot proceede witho poſſeſſio

Regul. ſine poſſeſsione de regulis juris in 6.

eſſion) doth notwithſtanding by pernancie, or
ing ſome part of his ground or penſion in mo-
y in lieu thereof, preſcribe a diſcharge thereof:
preſcription wherein a Lay man doth preſcribe
e manner of Tything, which albeit by the Com-
n Law is counted to be good by paying a thing
er ſo ſmall in lieu thereof, yet neither by the
non Law, neither by the Law of God it ſelfe,
uld it ever be leſſe then the juſt tenth it ſelfe; ſo
t the manner of Tything with them is not un-
ſtood in that ſence, as the Common Lawyers
e take it, by paying any thing whatſoever in
ce of the juſt tenth, but their intendment here-
is, that no countrey can bee bound to an uni-
mitie of payment of Tythes to bee uſed every
te: but every man is to pay Tythes according
the manner of the Countrey where hee dwels,
t is, that one payes his Tythe-corne, and
les up the ſame in ſheaves, an other leaves it
tered in the furrowes, an other tythes it in
ks or Pookes; and this is it that they meane,
there cannot be an uniformitie of Tything
ſcribed to every man, after which he is of neceſ-
e to ſet out his Tythe, but that he may pre-
be ſome other manner of Tything againſt the
ſon or Vicar: but againſt that uniformitie that
whole Tythe ſhould not be paid, was neuer
preſcription allowed among them, for they
more have beene of this minde, contrary to
which the Schoolemen hold, that Tythes are
t of the Morall Law, and not of the judiciall or
monial Law; and that in the Precept of

Linwood. Provin. quoniam verbo uniformis in Glo. de decim.

Eod. verbo conſuetudines.

Cap. à nobis de Decimis, in Gles.

Tythes, there is a double consideration, one of the honour of God, whereby he retained tythes unto himselfe, in signe of his universall Lordship over the whole world, which is irremissable, the other of the profit or utilitie of man, in that it concerneth the provision of the Minister in all ages, which is undispensable.

SECT. 4.

That Ecclesiasticall Judges admit pleas in discharge of tythes, and the manner of tything, contrarie to the conceit that is had of them.

AND yet, notwithstanding all this, the Ecclesiasticall Judge admitteth all kinds of prescriptions before-named, and according to the proofes thereon brought, giveth sentence either to absolution or condemnation: albeit the Reverend Judges of the Land, upon an erroneous report made in the eight yeare of *Edward* the fourth, have a conceit to the contrarie, viz. That no Ecclesiasticall Judge will admit any Plea in discharge of Tythe, or the manner of Tything, as it is in their sense taken; and therefore they hold whatsoever the Defendant doth alledge in his suite for a consultation, and namely that the Ecclesiasticall Judge did allow of the Plaintifes Plea and allegation, and did admit him to the proofes thereon without deniall, are idle speeches, & rather words of course then of effect and substance. And therefore notwithstanding, whatsoever is alledged by the Defendant

ndant, as concering the Eccleſiaſticall Judges well
ceptance thereof, it is counted nothing materiall
the Temporall Judges, for that they have a
judicate opinion of the Eccleſiaſticall Judge in
ſe caſes: and therefore howſoever the refuſal be,
be not, they grant out their Prohibition in theſe
ſes. And yet if the Judges Eccleſiaſticall pro-
edings might be ſeene, and vouchſafed to be read
fore them, it would bee plaine, there was no ſuch
uſe of their hard opinion againſt them; for every
here they doe allow ſuch and like allegations.
d if perhaps one inferiour Judge ſhould make
ſuſall as they pretend, yet could it not bee refor-
ed by an other in an ordinary courſe of appeale,
that there muſt needs be brought a Prohibition
t of the Common Law to redreſſe the ſame? un-
ſe happely they can ſhew, it is a general conſpi-
cy in the Eccleſiaſtical Judges, or a Maxime in
ir learning, that they wil not or cannot admit a-
plea of diſcharge in this caſe, which they can ne-
. And therefore, they are to be intreated to
nge their opinion in this point, and not doe the
cleſiaſticall Judges that wrong, as to charge
m with ſuch an imputation, whereof their
ole practice is witneſſe to the contrarie: for it is
worthy ſuch mens gravitie as theirs is, who pro-
nd unto themſelves the inquirie of the truth in
matters, thus to be miſconceived and masked
n errour, and that for ſo many yeares, and not
be willing to heare the contrarie, which is an
linacie in policie no leſſe obdurate, then the
ifts is in Religion, who ſee the truth and will

not believe it. And ſo farre as concerning Preſcri-
tions and the firſt cauſe and begining thereof.

CHAP. IV.

SECT. 1.

Of Priviledges and how they came in; and that
reaſon of the frequence of Priviledges, Statutes
Mortmaine came in.

NOw it followeth, that I ſpeak of Privile-
which are immunities granted unto pri-
men beſide the Law.

Of theſe, ſome are very ancient, ſuch as tru
zeale toward the Church bred, and the juſt ad-
miration of the holy men of God for their ſancti-
monie of life, their great knowledge in the word
God, their great patience in perſecution for Chri
and his Goſpel, the vigilancie and care they had i
their Office, ſtirred up both in Prince and People
So *Conſtantine* the great, being raviſhed with th
love of Religion, and the good opinion hee had
the Miniſters of his time, erected Churches, an
endowed them with large poſſeſſions, and grante
them ſundry immunities, whereby they migh
more ſecurely intend to the preaching of the wor
of God, and the winning of ſoules to the Chriſtia
congregation, wherein they laboured with all thei
might and power, God ſtill adding to the numbe
of the Elect. Neither did hee this alone in his own
perſon, but hee alſo gave leave to all other of hi
Subjects

ubjecta that would doe the like: whereupon the Church was ſo enriched within a ſhort time, that as *Moſes* in the building of the Arke, was faine to make a Proclamation, that no man ſhould bring in more towards the building thereof, the people bringing in continually ſuch great abundance of all things neceſſarie towards the furniſhing thereof, that there was enough and much to ſpare: So alſo *Theodoſius* the thirteenth Emperour after *Conſtantine* (although otherwiſe a moſt loving and favourable Prince towards the Church) was faine to make a Law of Amortiſation or Mortmaine, to moderate the peopels bounty towards the Church; as did alſo many wiſe Princes in other Nations upon like occaſion, and in imitation of this Act of *Theodoſius* many yeares after; and among the reſt, divers Princes of this Land did the like, upon the damage of the people towards the Religious Parſons, and ſpecially towards the foure Orders of Friers that were then newly ſprung up in the world. But yet this Act of *Theodoſius* was done with the great diſlike of theſe bleſſed men *Jerome* and *Ambroſe*, who lived in thoſe dayes; for that *Jerome* thus complaineth to *Nepotian* of that Law: *I am aſhamed to ſay it, the Prieſts of Idols, Stage-players, Coach men and common Harlots are made capable of Inheritance, and receive Legacies, onely Miniſters of the Goſpel, and Monkes are barred by Law thus to doe; and that not by Perſecuters, but by Chriſtian Princes; neither doe I complaine of the Law, but I am ſorie wee have deſerved to have ſuch a Law made againſt us*: In like manner, and upon the

L. 1. c. de ſacroſ. Eccleſis §. Si quis authent. de Eccleſia.

same occasion doth *Ambrose* deplore the state of the Clergie in his 31. Epistle: *Wee count it* (said hee) *no injurie, in that it is a losse, wee are not grieved that all sorts of men are made capeable of Wils, none excepted, how base, prophane, or lavish of his life or honestie soever hee be, but I am sorie the Clergie men onely of all sorts of people, are barred the benefit of the Law that is common to all; who notwithstanding onely pray for all, and doe the common celebration of the Service for all*: So farre they.

†Notwithstanding the ill opiniō which in these days is not without

† And yet whosoever lookes into this constitution, whereby it was forbidden, that any man should passe any Lands or other unmoveable possession unto the Church, without the Princes leave (for that thereby the things that are so pas-

cause conceived of the ancient *Abbyes* and *Frieries*, yet it must not be believed, but that these Religious houses in the old and true intent were purposed only for piety, and for such a practise thereof which the soule might freely enjoy, while it was so set at liberty from the inquietude and avocations of the over-active world. Therefore some of the most grave Sages, and learned Fathers of the Church retired themselves to this divine and peacefull solitude, and the profitable and profound writings which yet remaine, sufficiently testify how well the Monkes of old could spend their times. What strict devotion and unblameable carriage the ancient Prinees of this Land have expected from their holy men of this kind, may be understood by the Law made in the dayes of King *Cnute, Num. 6.* ⁊ þe ſillaþ þ̄ alceſ haðeſ men ȝeoꝛne ȝebuȝan ælc to þam ꝛiht þe him to ȝebẏꝛiȝe; ⁊ huꝛuþinȝa ȝoðaſ þeoþaſ ⁊ abboðaſ munecaꝛ ⁊ mẏnecena canonicaſ ⁊ nunnan to ꝛihte ȝebuȝan ⁊ ꝛeȝollice libban; ⁊ ðæȝeſ ⁊ nihteſ oft ⁊ ȝelome clipianne to cꝛiſꝺ; ⁊ foꝛ eal cꝛiſten folc þinȝian ȝeoꝛne; ⁊ ealle ȝoðeſ þeoþaſ þe biȝðaþ ⁊ læꝛaþ ⁊ huꝛu

ðiꝛȝa

ga ꝥacepdaꝛ ꝥ hiꝛ ȝod hipan ȝ clænniꝛꝛe luꝛian ȝ be-
om heom ꝛylꝛum diþ ȝodeꝛ ippe ȝ piþ þone peallen-
bpyne ðe pealleþ on helle; ꝛul ȝeopne hi pitan ꝥ
naȝon miþ pihte þuph hæmeð þinȝe piꝛeꝛ ȝemanan;
ꝛe þe ðæꝛ ȝeꝛꝛican pille ȝ clænneꝛꝛa healdan habbe he
deꝛ miltꝛe ȝ to pupuld punþꝛcipe ꝛý he þegen laȝe
ꝛyþe; that is: And we will, that every man of every degree. doe
neſtly follow that Right which to him belongeth, eſpecially Gods
iſters, the Biſhops, Abbots, Monkes, Voraries, Canons, and Nunns,
they take a right courſe, and live according to Rule, that they call
Chriſt night and day, much and oft; and that they doe it earneſtly
all Chriſtian folke. And we command and teach all Gods Miniſters,
ecially Prieſts, that they hearken to God, and love Chaſtity, that
y may deliver themſelves from Gods ire, and from the tormenting
es that burne in hell. Full truely they wit, that it is againſt the
ht to medle with Women for luſts ſake. And thoſe that will ab-
ine from theſe things and cleanneſſe hold, they ſhall have Gods
cy, and in worldly worſhip, they ſhall have equall Right with a
ble man.

It ſeemeth alſo by an *Arabick* Canon of the firſt *Nicene* Conncell,
at great ſtrictneſſe and ſeverity of life was required of theſe holy
iers; for the Canon ſaith, that they might not carry about them ---
כדגלא ילא ז׳גרחת ז׳ילמעי אמכ ז׳יכאכסלא ש
לאחת &c. אסיכ מהטאסוא יפ אי׳קלעי אלו ,אלו &c.
פ נועסי אלו אצוא &c. הצפלאו בהרלא סתאוח ניס
ראקו ריעב אי׳ם קלוסאלאו קו: apaire of knives, as if
y were quarrelling fellowes going out to fight and kill, &c. That
y might not hang a purſe at their girdle, &c. And that they might
t ſeale a letter with a golden or ſilver Seale, &c. And moreover
t they might not walk in the Streets or Allyes, but in a moſt
ve & ſober manner, &c. as it is ſet downe in אלקאנון אלתמאנון,
e 80. Canon of the fore-named *Arabick* Councell, according to the
nuſcript Copie.

The great eſtimation that was had of theſe holy Men, enforced ſuch
immoderate charity in devout minds, that they obtained moſt eſpe-
ll Priviledges and exemptions, and no man thought any thing too
good

good or too much to bestow upon a Monasterie. But two great i
conveniences, followed upon the coufluence of these large and am
endowments, one was the luxuriant demeanour of these relig
Orders, degenerating from their old sanctimony. This is noted
provided against by the Novell of *Nicephorus*, about the yeare 9
Ἄρτι δὲ βλέπων τὴν περὶ τὰ μοναστήρια. καὶ τὰ ἱερὰ τ
σεμνεῖα περιφανὴ νόσον (νόσον γὰρ ἐγὼ τὴν ἀπληστίαν τ
καλῶ) οὐκ οἶδά τινα δὴ τοῦ κακοῦ θεραπείαν ἐπινοήσω, ἢ πῶς κ
σω τὴν ἀμετρίαν: τίσι γὰρ πειθόμενοι τῶν πατέρων. ἢ πόθεν λαβ
τὰς ἀφορμὰς, πρὸς τοσαύτην περιττότητα, καὶ μανίας ψευδεῖς (
τὸν Θεῖον φᾶναι Δαβὶδ) ἐξήχθησαν; γῆς πλέθραμυρία, φιλοτίμ
κοδομὰς, ἵππων ἀγέλας, βοῶν, καμήλων, ἄλλων κτηνῶν ἀριθμοῦ,
τόνων, ὅσαι ὧραι κτᾶσθαι σπουδάζοντες, καὶ τὴν ὅλην μέριμν
ψυχῆς περὶ αὐτὰ κατατείνοντες, ὥστε κατ' οὐδὲν τοῦ κοσμικοῦ
καὶ πολλαῖς φλεγμαίνοντος ταῖς φροντίσι, τὰ μοναχικὰ ταῦτα
φέρειν: that is, But now perceiving among the Monasteries and Re
ligious Houses, a notable disease, (for so I call their unsatiable desire
I find not which way I may provide a cure for this malady, or ho
to punish their excesse. For what Fathers could perswade them,
from whence could they take occasion so superfluously to abou
or (to say with holy *David*) to be so vainely mad? Their care is e
very houre to purchase to themselves Lands without number, sum
tuous and stately Buildings, troupes of Horses, droves of Oxen a
Camels and other Cattell innumerable, and bending all the solli
tude of their mindes this way, they make a Mouasticall life litle dif
rent from that of the World, which is incumbred with variety
anxious care. For these and the like Reasons, the Novell forbids
build any more Monasteries, but this was afterwards repeal'd by t
Junior *Basil*.

An other great inconvenience would have been, the impoverish
of secular States by Amortization of Lands, which Princes foresee
set a bound to these exorbitant Donations, rostraining the excesse
that Charity, by mature and timely decrees. In *Spaine* the Lawes
Mortmaine began under the Kings of *Aragon*; in *France*, *nihil usita*
us, as one saith: The like provision hath been made here at home
which see the Statute *De Religiosis* in the Great Charter, which
hath been confirmed by the succeeding Princes of this Land: Yet
what cases Lands may be devised in Mortmaine, See the Writ *Ad q*
Damnum, iu the *Natura Brevium*.

Concerning

Concerning the reaſon of the name, *Polydore Virgil*, ſpeaking of the confirmation of the former Statute by *Ed.* the firſt, ſaith thus', *Et eam hanc ad Manum mortuam vocarunt, quòd res ſemel data Collegiis Sacerdotum, non utique rurſus venderentur; velut mortuæ, hoc eſt, uſui hominum mortalium in perpetuum adempta eſſent.* That which the Author ſaith concerning this, is the reaſon of *Peckius*, in his Book *De Alienatione bonorum, Cap.* 2. But the notation of the word is otherwiſe obſerved out of the Statute, by a great Lawyer: Lands (ſaith he) were ſaid to come to Dead Hands to the Lords, for that by Alienation in Mortmaine, they loſt wholly their Eſcheats, and in effect their right ſervice, for the defence of the Realme, Wards, Marriages, Reliefs, and the like, and therefore was called a Dead Hand, for that a dead hand yeeldeth no ſervice. It is the obſervation of Sir Edward Cooke, upon Judge *Littleton*'s Tenures, under the Title of Fee ſimple, upon the words [*Car ſi homine purchaſe, &c.*]

What ever uſe there might be of theſe Lawes of Mortmaine in time paſt, certain it is, the preſent needeth them not; for in theſe dayes wherein men are ſo raſh handed, as to give too much to the Church: And that which Was heretofore ſaid of thoſe things that were given, that they were in a Dead Hand, may now more juſtly be ſaid of thoſe things that are taken away.

[illegible] come, as it were, into a dead hand, which holdeth ſurely faſt that which it once apprehended, neither eaſily parteth with it, ſo that it cannot without much difficulty be reduced and brought again to the commerce and common uſe of men) ſhall finde it was rather for the benefit of the Common-wealth, then for the diſlike of the Church, that it was ſo ordered.

For if that courſe had beene holden on ſtill, the greateſt part of the livelihood of the Common-wealth would in ſhort time have come unto the Church, and ſo Lay-men ſhould not have beene able to have borne the publicke burthens of the Common-

Common-wealth; which it concernes Secular Princes to be carefull of, and to foreſee, that by overmuch bountie towards the Church, they impoveriſh not their owne ſtate, and loſe the right of Eſcheats, Primer-ſeiſin, and other Priviledges of the Crown in caſes of forfeiture, and ſpecially make bare their Lay-ſubjects, upon whom a great ſervice of the Common-wealth doth lye. And yet otherwiſe the beneficialleſt ſtate of this Realme unto the Prince is the Clergie, as from whom the King hath a continuall revenue in Tenths, and in deepeſt in Subſidie, and not the leaſt in all other extraordinarie charges, according to the proportion of their place. And therefore, as the King is to maintaine the one, ſo he is alſo to cheriſh the other, and not to ſuffer their ſtate in any ſort to be diminiſhed, for that all other ſtates are made for the ſervice of the Church, and the Church againe for the benefite of them.

But this was none of thoſe Priviledges that I ſpake of, for theſe are more ancient then they, and granted out upon better devotion then the other; but after this the zeale of Religion being almoſt extinguiſhed in the Chriſtian World, (partly by the great uproares and tumults that were in every Countrie, by the breaking in of one barbarous Nation or other upon them, who pulled downe Churches faſter then ever they were built, and made havock both of Prieſt and people, that profeſſed the name of Chriſt, partly by the hereſies that roſe every where in the Church in thoſe days, which diſtracted mens mindes, and made them

waver

ver in the conſtancie of their Religion) it was ived againe upon this Occaſion.

SECT. 2.

the begining of Cloyſtered Monkes in the Weſt Church of Chriſtendome, and that the Author thereof was one Benedict. *a Roman about the yeare 606.*

ONe *Benedict*, who otherwiſe had beene a man of action in the Common-wealth, (that *edict* which was, as it were the Father of all ſe that profeſſed a Regular life, within the Weſt rt of Chriſtendome; for before his time the onkes of the Weſt Church, ſerved God freely road, without being ſhut up in a Cloyſter) he, I y, finding himſelfe wearied with the tumults & oyles which happened under the government of *inian*, and ſome yeares after by the incurſion thoſe barbarous Nations (before named) into *aly*, retired himſelfe into a deſert and ſolitary ace, intending there to give himſelfe wholly to e ſervice of God: where, when he had a while mained, he grew ſo famous by his Chriſtian ercriſes of faſting and prayer, and the good and holeſome exhortations that he made to thoſe ho reſorted unto him, that within a very little ime after, there was great confluence of people nto him, not onely from divers parts of *Italy*, but ven from ſundry other parts of the World; ſo hat within a ſhort time they grew into Fraternitie under-

Hoſpinian de origine Monachatûs.

underneath him, to whom he gave rules to li
by, to the imitation of that, which Saint *Basil* d
in the East Church: to which his Disciples submit
ted them selves with all alacritie, leading a li
farre different from the common sort of men, deny
ing unto themselves all those ordinary delight
that other men doe commonly take, out of mea
drinke, apparell, marriage, Temporall preferment
and such other things which worldly and carn
men seeke for very greedily, humbling themselv
onely to God, and the rule of their Master. Whi
thing bred such an admiration of him, and of h
Schollers, that not only many other Ordes spr
out from them within few yeares; as the *Prem
stratenses*, *Cluniacenses*, *Templarians*, *Hospitall
Cystertians*, and the order of Saint *John* of *Jeru
lem* but even Popes, Princes, & people were wh
ly carried away with the wonderment of the
insomuch as every of them did as it were str
who might shew themselves most kinde unto the
wherupon Princes built them houses, every one
his Kingdome, as *Clito Ethelbald* King of *Merci
built the Monasterie of *Crowland* here in *Engla
of blacke Monkes, under the rule of the fa
Benedict, in the yeare 716. Popes and Princ
granted them priviledges, so farre as it concern
either of their particulars: the Clergie, Nobili
and People, conferr'd goods and lands upon the
every one according to his abilitie.

SECT

SECT. 3.

t the admiration which theſe Religious Men did reed of themſelues in the head of Princes and opes, did procure appropriations of Parſonages, d Immunities from Tythes, And that over-conceit which men had of Prayer above Preaching in the Church, was an adjuvant cauſe thereunto.

N this zealous bounty of every degree towards theſe new ſorts of men, there are two undigeſted ſledges granted them, both of them ſo hurtfull injurious to the Church of God, as never any the like. The one was the Annexation or propriation of preſentative Benefices to theſe ious Houſes: The other, the freeing of ſuch ds or Hereditaments, as they held in ſundry lhes from the payment of Tythes to the Par- and Vicars thereof; to both of which the ool-mens Divinity gave great advantage, as be ſhewed hereafter.

Either of theſe had their begining of one roote, is to ſay, of this falſe ground, that Preaching, ich is the moſt true, and moſt naturall foode of Soule, in a Congregation that is come to the eſſion of Religion already, and knowes but the Articles of the Chriſtian Faith, the ds Prayer, the Ten Commandements, d other Principles and Rudiments of Chriſtian ligion, is nothing ſo neceſſary for the Salvation a mans Soule, as Prayer is: Beſides, that Preaching

Linwood provin. eiſdem, de offic. Archidiaconi, & cap. Ignorantia Sacerdotum, de officio Archipreſbyteri.

ing oftentimes gives more cauſe of Schiſme, a
diſpute in Religion, then it doth of profiting a
edifying the Soule: and therefore it was not p
mitted by the Provinciall Conſtitutions of
Realme, that Parſons or Vicars of Churc
ſhould expound or preach any other ma
or doctrine, then the Lords prayer, the T
Commandements, the two Precepts of
Goſpel, that is, the love of God, and
love of a mans Neighbour, the ſixe work
Mercy, the ſeven principall Vertues, the ſeven
cramentes, (for ſo many then the Romiſh Chu
held) the ſeven deadly Sinnes, with their pro
and this to be done vulgarly and plainely, *
cujuſtibet ſubtilitatis textura fantaſtica, (for
they call learned and orderly Preaching;) whe
notwithſtanding Prayer is evermore profi
every where neceſſary, and never danger
Furthermore, Preaching onely profiteth thoſe
be preſent, and doe heare it, and attend upo
but Prayer is availeable even to thoſe that be
diſtant, yea though they be in the remoteſt place
the world. By which, and other like argume
they tranſlated away that maintenance that w
provided for the home Paſtors, (who by Go
owne inſtitution, were to watch over their Soul
to forreine & ſtrange Guides, who never comm
nicated to their neceſsitie in any heavenly co
fort, but onely tooke the milke of the flock, a
fed themſelves withall. But by this pretence
theirs, ought not Preaching to have beene d
graced; for albeit Prayer bee a neceſſarie peece
God

Gods ſervice, and ſo neceſsary, that the Soule of
n is, as it were, dead without it, yet is it
t † equall to the dignitie of Preaching, which
od hath ordained to bee the onely meanes to
ne to Salvation by: For Faith comes by hear-
, and hearing by the word of God; and without
h it is impoſsible to be ſaved: for Faith is a
that purifies the heart, and makes a mans pray-
s acceptable to God; and therefore neither of
em ought ſo to take place, as that the one
uld ſhoulder out the other, but they ought ſo
goe hand in hand together, as that one ſhould
, aſsiſt, and countenance the other.

† But here it will need, that the Reader uſe a ſober judgement; for it cannot but be thought unequall, that prayer and Preaching

uld be ſo unwarily plac'd in competition, as that Prayer ſhould by the compariſon. There may be always need of Preaching, then moſt of all, when the Auditory is unchriſtian. This reaſon lled for all places in the firſt times, but in theſe laſt only for , according to which it were unprofitable to goe about to con- the *Indies* no otherwiſe then by our Prayers. Yet even in thoſe itive times, which had moſt cauſe to call for Preaching, we ſhall that this duty was of rarer exerciſe, and leſſe ſolemnity then of Prayer, as it may abundantly be diſcovered out of the Litur- of both the Churches. And it is obſervable, that where preach- hath been of the greateſt account, it hath been ſo much beholden Prayer, that it was not only begun and ended, but alſo diſcontinu- by devotion: For we ſhall find the Reverend Fathers *Chryſo-* and *Baſil* of *Seleucia* at prayers in the middle of a Sermon: See one in his 39. *Ora.* the other in his 3. *Hom.* Περὶ Ἀναπαύσεως, *Moſes* the Sonne of *Maimon*, that profound Doctor of the *Jewes*, ting a compariſon betwixt their Sacrifices, and the more ſub- all Services required, in ſtead of all other, nameth that of Prayer Invocation, and of theſe he ſaith, that they are ——— &c. ותר קרובית אל חכינה הראש nearer to (Gods) firſt in- ion, and that our way thereunto, is by them: and afterwards he

ſaith that theſe are neceſſary — בכל מקום וכלמי שיזרמן בכל זמן at all times, in all places, and for every man. See his *Nevoch, Helec.* 3. *C*, 32. *p.* קנ. And holy *Antioch* in his 106 *H* which is περὶ προσευχῆς, ſaith of Prayer (ὅτι) ὑψηλοτέρα τ χάριτι πασῶν τῶν ἀρετῶν, that it is of a more ſublime condi then any other vertue. And how our Lord himſelfe ſtood affecte this, we may acknowledge by that, where he calleth the Church *Houſe of Prayer*, not *Preaching*, which took ſo well in the times, that all their Temples were known by the name of Euχ Oratories Nay the Preacher himſelfe, *Prov.*15. is ſo confident juſt mans Prayer, that he dares ſay, that God will even be obe to it (for ſo ὑπαχέει or ὑπαχέει is rendred by the Interpreter o forenamed *Antiochus*,) However. It may ſeem to be ſo, for wh the Preaching of *Lot* could prevaile no otherwiſe, then to bring tion to his righteous Soule, the Prayers of *Abraham* might have *Sodom*, if among ſo many thouſands, there had been but ten men.

All this while we would not detract any thing from Preachin conſidering our ſelves to live under a State ſo maturely comp and ſo throughly adviſed and ſetled in the Faith, it will be exp that we ſhould ſo farre moderate our opinion of Preaching, as our magnifying thereof, may no way tend to the diſcredit or vantage of moſt neceſſary Prayer.

SECT. 4.

Whether Appropriations came firſt from Princes Popes it is queſtionable.

BUt how theſe annexations of Benefices ſ came into the Church, whether by Princes authoritie, or the Popes licence, it is diſputable, and there are reaſons on both ſides to ſhew the ſame.

For whereas there are reported by *Ingulphus* bbot of *Crowland* before mentioned to have ene eight Churches, beſide the Patronage of me other, annexed and appropriated to the ſaid bbey, by ſundry *Saxon* Kings, it doth not ap- re, by ought I can finde, whether they were ne by the ſoveraign authoritie of the Kings ne, to the imitation of that, that was done by *rtellus*, who made all Chriſtian Kings to ſinne his point, or that it was done by any other Ec- ſiaſticall authoritie, for that there is nothing ant for the allowance thereof, ſave the ſeverall rters of thoſe ancient Kings only: & that I uld bee the rather induced to believe that it done by thoſe Kings authoritie only, I am reto perſuaded, for that I finde *William* the *queror.* immediatly upon the great victory hee got over this Kingdome, to have appro- ed three Pariſh Churches to the Abbey of *ttaile*, which hee built in memory of his Con- eſt And whereas *William* his ſonne had de- pulated and overthrowne ſundry Churches in new Forreſt, *Henry* his brother by his Letters tents gave the Tythe thereof to the Cathedrall hurch of *Sarum*, & annexed thereto twenty other hurches in one day; if the copie of that record t I have ſeene, as concerning theſe appropriati- , be true, yea the matter was gone ſo farre in oſe daies, that even Noble perſons and other aner men, would command Corodies and nſions to their Chaplaines, & other ſervants, out f Churches, and this could not be redreſſed

Anno i. *Edw.*3. c. 10.

untill ſuch time as there was made a Statute to reforme it.

On the contrary ſide, that I ſhould take it to be a deviſe of the Pope, I am moved thereto, for that I finde every of theſe orders of Religious men were confirmed by one Pope or other; & as they confirmed them, ſo it is like they made proviſion for them, & that moſt eſpecially this way, & that chiefly after the Laws of Amortiſation were deviſed, & put in ure by Princes: & thereupon it is that we find ſundry ſorts of annexation made by Popes & Biſhops under them, euery one in their Dioces as ſome were made ſo far as concerned the Patronage only, & then had the Monks therein preſentation only: ſome other were made *pleno jure*, & then might the Monkes both inſtitute & deſtitute therein without the Biſhop, and turne all the profit thereof to their own uſe reſerving onely a portion to him that ſhould ſerve the Cure there: ſome other Churches did they grant ſimply to them without any addition of full right, or other words, & then if the Church were of their own foundation, they might chuſe, the Incumbent being once dead, whether they would put any other there unles perhaps the ſame Church had people belonging unto it, for then muſt they of neceſſity † maintaine a Curate there; & of this ſort were the Granges, & Priories, & thoſe which at this day we call Donatives: but if it were of another mans foundation, then was it otherwiſe. To this alſo I adde, that the Pope every where in his Decretals

Linwood c. licet bona memoriæ. Gloſſ. in verb. aſſcruunt non ligari. de locato & conducto.

† By occaſion of that which the Authour here ſaith, and that which hee hath hereafter ſaid concerning the Patrons penſion from the Biſhop, *Chap.* 5. *Seſſ.* 1. of this

3. *Part.* It shall be here enquired, what Right and Title the ocesan had to a new Church, or Monasterie, and how it stood in parison of the Patron; and because this Right seemeth originally to over it selfe in the Founding, Erecting, and Endowment of a rch or Monasteries (by all or either of which the Law saith a on may be made, the Bishops consent alwaies presupposed, as after shall appeare) therefore in the first place it must be consider- how farre forth the Bishop was concerned in these, that it may the r be understood, how truly hee was qualified to the Right of entation. For that which concernes Foundation and Erection. All the Patron had free to himself in the first place, was but his ught, he might think where he would designe the Ground, or he might Build the Church; and if he entertained his owne Mo- hee mighr make it his purpose. But this was nothing without Ex- on; and to this the Diocesan was to bee required, as the most prin- l and most effectuall Agent; therefore it is said in the 4. Canon of Councell of *Chalcedon*, that no man shall erect μοναστήριον ἢ εὐκ- ον οἶκον παρὰ γνώμην τοῦ τῆς πόλεως ἐπισκόπου, a Monasterie Church without the Bishops consent. And *Lambertine* saith, that was so necessarie, that if a Church were set up in the Patrons d without his consent, the Patron could not pull it downe with- the Bishops consent; yet if the Patron built a Church upon his e ground without the Bishops consent, the Bishop might pull it e without the Patrons consent, and yet in this case the Patron t not doe it without the Bishops consent, &c. But to see further. the Greeke Church their Euchologue saith τῶν θεμελίων εὐτρε- λόντων τοῦ μέλλοντος ἀνεγείρεσθαι ναοῦ παραγίνεται ἐκεῖσε ὁ Αρ- ς, &c. That the Materials being provided for the foundation of the rch that shall be erected, the Bishop commeth thither in person, and having put on his Formalities, the Επιτραχήλιον and Ωμοφόριον, he saith certaine Prayers Εὐλογητὸς ὁ Θεὸς, &c. Πα- ια τριὰς, &c. This done Ὁμῶν Αρχιερεὺς θυμιᾶ τοὺς θεμελίους ὁ δὲ ψάλτοι λέγουσι τὸ Απολυτίκιον τοῦ Αγίου εἰς οὗ ὄνομα ὁ μέλλει ἀνεγείρεσθαι, καὶ ἕτερα τροπάρια οἷα βόλεται ὁ προε- , &c. *i.* the Bishop sumeih the Ground worke with his incense ularwise, then the Singing men say the Απολυτίκιον [a kinde of llect] for the Saint to whose name the Church is dedicated, and e other Services as the *Chaunter* shall appoint. That which follow-

eth

eth in the Euchologue concerning the Corner-stone, which the Bishop crosseth, and layeth for the Foundation, hath beene formerly observed, by occasion of the Emperours Novell to this purpose.

Where we speak of the B. habite, wee have safely retained the word of the Euchologue, Επιτραχήλιον & Ωμοφόριον, or that we finde them confusedly and uncertainly rendred. The latter may import *Humerale*, the former seemeth literally to be as much as *Collare*; but *Gretser* was very angry with *Iunius* for translating it so, (in his Notes upon a fragment of *Curopalate*) *Quasi de Canibus sermo esset*, as if (saith the Jesuit) Master *Young* had beene talking of Dogges. But see what *Gretser* himselfe saith to the word Επιτραχήλιον & Ωμοφόριον in his Comment upon *Codin. cap.* 16.

To returne to our Diocesan. The right and title to a Church, and that which belongeth thereunto, is more peculiarly acknowledged by the σταυροπήγιαν, or setting up of the Crosse, the performance whereof was in this manner: Αναφέρεται τῷ Πατριάρχῃ περὶ τῆς οἰκοδομῆς τοῦ Ναοῦ καὶ γίνεται γράμμα προτρεπτικὸν ἢ πρὸς τὸν ἔξαρχον αὐτοῦ, ἢ πρὸς τινα τῶν Αρχιερέων ἐπιθεμελιωθῆναι καὶ καθιερωθῆναι καὶ τὸν Ναὸν τελεσθῆναι ἐπὶ Σταυροπηγίῳ πατριαρχικῷ. κελεύει δὲ γενέσθαι καὶ σταυρὸν ξυλινὸν ἐν ᾧ γράφουσι οἱ πατριαρχικοὶ γραμματικοὶ ἐν τῷ ἑνὶ μέρει· Σταυροπήγιον πατριαρχικὸν ἁγιασθὲν ἐπ' ὀνόματι τοῦ Αγίου τοῦδε, ἐν τῇ θεοσώστῳ πόλει τῇδε, ἐν τῇ Επαρχίᾳ τῇδε. ἐν τῷ ἰδίῳ θελήματι παρὰ τοῦ ἁγιωτάτου καὶ οἰκουμενικοῦ πατριάρχου τοῦδε. Εν τῷ ἑτέρῳ μέρει. Επὶ τῆς βασιλείας τῶν εὐσεβεστάτων βασιλέων ἡμῶν τῶνδε, κατὰ μῆνα τόνδε, ἐν ἔτει τῷδε. Καὶ πέμπεται ὁ σταυρὸς ἐν ᾧ ὁ ναὸς μέλλει οἰκοδομηθῆναι. Εἶτα ὁ προσδεξάμενος ποιεῖ τὴν ἄνωθεν ἀκολουθίαν ἐπὶ τῷ θεμελίῳ, ὅταν δὲ ποιήσῃ τὴν καθιέρωσιν πήγνυσι καὶ τὸν σταυρὸν ὄπισθεν τῆς ἁγίας τραπέζης προσευτρεπισθέντος τινὸς ἀνωφεροῦς οἰκοδομήματος λάκκον ἔχοντος ἢ διὰ λίθων, ἢ διὰ σιδήρου, ἢ διὰ χαλκοῦ, ὡς ὁρᾶται ἐν τῇ μεγάλῃ Εκκλησίᾳ, &c. *Euchol* ρμα: i. Word being brought to the Patriarch concerning the Church that it is to be built, Letters are directed either to the Exarch, or to some of the Bishops to request that the Church may be founded, consecrated, and entitled to the Patriarchs Σταυροπήγιον: then commandement is given that a crosse of wood be provided, upon which the Patriarches Secretaries must set downe, upon the one side *The Patriarchs* Σταυροπήγιον, *consecrated in the name of such a Saint, in such a Citie preserved by God, in such a Province, of proper will, by such and such the most holy and Oecumenicall Patriarch,*

riarch. On the other ſide, *During the Reigne of ſuch and ſuch our religious Princes, in ſuch a Moneth, of ſuch a yeare.* Then the Cru- muſt be ſent to the place where the Church is to be erected, there [the Biſhop] by whom it is conveighed ſaith the forena- Service, which is uſed at the founding of a Church ; and when keth the Conſecration, the Croſſe muſt be ſet up behinde the Altar, there being prepared for it ſome lofty ſtructure, fitted concavity (to receive it) either of Stone, Iron, or Braſſe, as be ſeen in the great Church. By the great Church, underſtand of S. *Sophia* in *Conſtantinople.* Thus the Euchologue, for the e Church. The like to this (for as much as concerneth the nce) is obſerved in the Latine, but the Ceremonies there are tedious and elaborate. The Reader that hath ſo much time and ace, ſhall find this true in their Pontificall.

the ſetting up of the Σταυροπήγιον, the right of the new Church conveyed to the Patriarch, or Biſhop as by an eſpeciall title: ſo ow, for the moſt part, things were altogether diſpoſed by, but ng at all without the Biſhops juriſdiction. And wee alwayes adde, Biſhop, for though the Patriarch be eſpecially named in the logue, & it be alſo a controverſie between them concerning this , as it is taught by *Balſomon* upon the 31. of the Apoſtles Canons, hat the Biſhop, if not onely, yet alſo had this right, it is evident by Emperours Novell. And concerning the conveyance of this Right the Σταυροπήγιον, ſee what is ſet downe by the Patriarch of ntinople in the caſe of *Iohn* Biſhop of *Lepanto*; and for this ſee the *Graco-Romanum. Tom.* 1 *Lib.* 3. *Sent. Synod.* 1, p. 232. 233. *&c. Francofurt. Ann.* 1596. See alſo that of *Manuel, de jur. Patronat.* 42. And that the Patriarch or Biſhop ſhould challenge this juriſdi- over the new Church it ſeemeth moſt reaſonable. For what did Lay Patron do more then a man of Iſrael, who brought a Lambe the doore of the Tabernacle, but the Prieſt made it an Offering and Attonement? The Patron indeed perhaps might chuſe the place, but the Prelate came and ſanctified the ground, it might as well be a e of *Theeves* as *a houſe of Prayer.* The Patron might bring the s, the Biſhop laid the foundation; or if the workeman put the rials together, & made up a houſe, the B made that a Church; then, nothing was but the breathles body of a Temple, the ſoule be- yet to come from a diviner influence of the Dioceſan Therfore it , that the priviledge of a new Church followed not the building

but the consecration of it, as the Condition is worthily observed
the devout & learned *K. Alured* in his Lawes *C.* 5. which
Be cyricena ƿrỳðe of the priviledges of Churches. T
King saith, that if a man pursued by his enemy flye to
Temple ƿ hine ƿeorian nihtum nân man ut ne deo.
man may take him away for the space of a seven Night.
he ƿor hungre libban mæg, &c. if he be able to live
hunger &c. Other and great immunities the King
granteth to the Church: but the Law had this caution
ƿeccaþ ægþẏlcne cyricean ðe Biscop gehalgode
ƿrỳþe; This) freedome we give to every (such) Chur
as shall be hallowed by the Bishop.

Wee have seene upon what just and valuable considerations
Diocesan might challenge, a Right and Title to the New Church
foundation and erection. In the pursuite hereof wee hope to set do
manifest incouragements to argue the use and exercise thereof, i
endowment and filling of a Church or Monasterie. Therefore i
looke backwards wee shall finde it a Custome well nigh from all
tiquitie, that the goods and revenues of Churches heve beene al
acknowledged to belong of Right to the Bishops disposing. Som
thoritie for this may be had out of those Canons which are called
Apostles; Canon 37. Πάντων τῶν ἐκκλησιαστικῶν πραγμάτων ὁ
σκοπὸς ἐχέτω τὸν φροντίδα καὶ διοικείτω αὐτὰ ὡς Θεοῦ ἐφορῶν
Let the B. have in his power all the goods of the Church, and let
dispose of them as in the sight of God. So the 40. Canon Περὶ
&c. Where also the reason is given εἰ γὰρ τὰς τιμίας τῶν ἀνθρώ
ψυχὰς αὐτῷ πιστεύτον, πολλῷ ἂν δεοι μᾶλλον, ὅπως τῶν χρη
των ἐπιτελεῖται. For if the pretious soules of men are committed
his care, how much more ought hee to bee intrusted with the Chur
revenues. For the authority of those Canons, is may now be thou
too late, and to little purpose to speake: and yet I have alwaies m
velled who that should be, that durst be so bold, as to fasten so m
forged precepts upon the Apostles; and much more, that whoso
he were, hee could be so fortunate in his fraud, as not to be discove
rather in the next Age, than in those later times, which saw t
former at a distance, & may be thought to know but a little of th
which was then done. True it is, that some of these Canons m
seem

to argue, neither the Spirit, nor Style of that Age. in which pretend to have beene brought forth: and yet of others we are to thinke more soberly. To say no more, we will onely set ne that of the Arabicke Paraphrast, who at the end of his tran- on of these Canons, in stead of that which the Greek saith [ταῦτα ἐκ κανόνων διατετάχθω ὑμῖν παρ' ἡμῶν, ὦ Επίσκοποι, these we have delivered unto you concerning the Canons, O ye ops] saith thus, יא מעשר אלמומנין אקבלוא כו אמנא ווצאיאנא that is, O yee Familie of the faithfull attend: מן רות אלקדש אלרב אלמחי אלדי unto our words and epts, for that they come from the holy Spirit of the living Lord Care. But however it be resolved against these Canons, yet that h we have said is also set downe by the Synod at *Antioch. Can.* 25. where Note(saith *Balsamon* upon the 25. Canon) ὅτι διὰ ...ιαστικῶν ὀφείλουσι πάντα τὰ τῶν ἐκκλησιῶν διοικεῖσθαι, that Administration of those things which appertaine to the Church, geth to Ecclesiasticall men. Reade also to the same purpose the 7. Canons of the Councell held at *Gangra*, Εἴ τις καρποφορίας ἐκ- ...ιαστικὰς &c. And Εἴ τις διδοῖ ἢ λαμβάνοι καρποφορίαν, &c. e a Curse is past upon all those that presume to give or receive Church fruits, otherwise than by the Bishops dispensation, or who by the Bishop shall be appointed thereuuto. And *Steven* p of *Rome* in the second Centurie, saith, *Laicis quoque quamvis si sint nulla tamen de Ecclesiasticis Facultatibus disponendi*, (so reade, rather than *Respondendi*) *legitur unquam tributa facultas*, it cannot appeare, that ever any power was granted to Lay-men, gh Religious, to dispose of Ecclesiasticall goods. It is the ops observation in his second Epistle, and long after him it was ated in the Councell at *Lateran*, under *Innocent* the 3. *Chap.*. 44. the yeare 589. is was set downe in the *Toletan* Conncell, Can, 9. Churches *cum suis Rebus* should *ad Episcopos pertinere*. And *Cyril Alexandria* in his Epistle to *Domnus*, saith, that the Diocesan for time being, may θαρσεῖσθαι that is (saith *Balsamon*) ἀντὶ τοῦ κατὰ ...ους ἐμπιστεύεσθαι, that he may confidently and securely be in- ted with the Church Revenues. And because the Bishop had this er over the goods which were conferred upon the Church, it eth to be a Reason why hee was somtimes present at the last Will Testament of Benefactors in this kinde; for this appeareth by the ll which *Bertricke* made, a *Kentish* Gentleman of *Mepham*, related by

by *Lambart* out of the Antiquities of that place And þa tẏn hẏ
on ðꝛꝛettune into ðæm mynſtꝛe to ꝑolcneſte
And þ land æt ꝑealcanham aꝑtꝛe bẏ ꝛhꝑaꝛa ðæge
to S. Andꝛee ꝑoꝛ Ælꝑꝛic ſaꝑle, hiꝛe hlaꝑoꝛð and h
ẏlðꝛan, ſꝑa heoꝛa cꝑiðe ꝑæſ; And I give (ſaith the Teſta
10. hides at *Streiton* to the Minſter at *Walkenſtede*, And the La
Falcham after *Bythwares* dayes to S. *Andrewes* for *A Elfrics* So
their Lord and his Elders, ſo their will was, &c. And this is ſaid to
done on ȝeꝑitneſſe Eað ȝiꝑe þæꝛe hlæꝑðian ⁊ Od
Æꝛcebiſceopeſ, &c. and Ælꝑſieſ Pꝛeoſteſ on Cꝛoȝð
i. Witneſſe *Eadgiue* the Lady, & *Ode* the Archbiſhop, &c. and *A*
the Prieſt of *Croyden*.

From this Right which the Dioceſan had in the diſpenſatio
Eccleſiaſticall goods, it proceedeth that he was alſo eſpecially
cerned in the Endowment of a Church or Monaſterie. For a Mo
rie, the 17 Can. of the 7. Synod ſaith thus, Ὁ βουλόμενος κτίσαι
ναστήριον εἰ μὴ τὰ πρὸς ἀπαρτισμὸν ἔχει κωλυέσθω παρὰ τοῦ
πισκόπου. *Ius. Græc. Rom. in Epit. S. Can.* Τμημ. δ. περὶ μοναχ
But ſee for the Canon as *Balſamon* and *Zonaras* have it, and what
ſay: Be it a Monaſterie. or otherwiſe a Church, or Oratorie, *Balſ*
ſaith ἀναγασθήσεται ὁ κτίσαι μέλλων προσαγαγεῖν κατὰ δοκιμ
τοῦ Επισκόπου, τὸ ἀρκοῦν. The Founder ſhall be forced to bring a co
petencie according as the Dioceſan ſhall approve. And how much
Biſhop was conſidered in this matter, it appeareth by the 32. Ca
of the 4. Councell at *Toledo*, held under *Honorius* in the yeare 6
Noverint tamen conditores Baſilicarum in rebus quas iiſdem Eccleſiis co
ferunt, nullam ſe poteſtatem habere, ſed juxta Canonum inſtituta ſi
Eccleſiam ita & dotem ejus ad ordinationem Epiſcopi pertinere. Wh
it is ſaid, that the Founder muſt know that he ſhall have nothing
doe, neither with the Church, nor that which he beſtoweth upon
but both ſhall belong to the Biſhops diſpenſation. And this is alſo ci
by *Gratian* in the Decree 10. *q.* 1. *cap. Noverint.*

In the *Bracaran* Councell, held in the yearè 672. *Can.* 5. it is
downe, that the Biſhop may refuſe to conſecrate any Church till
be made ſure of a convenable Dotation. *Meminerit* (ſaith the Ca
to the Biſhop) *ut non prius dedicet Eccleſiam niſi antea dotem Baſi*
& obſequium ipſius per donationem Chartulæ confirmatum accipiat,

...is est ista temeritas &c. And before this as much was said in the ...*tan* Councell of the yeare 582. Can. 19. which also was re-...d in 888. in a Councell holden at *Mentz. C.* 4. *Multi contra ...m constituta, sic Ecclesias quas adificaverunt postulant con-...i, ut dotem quam eidem Ecclesiæ contulerunt censeant ad Episcopi or ...nem non pertinere. Quod factum & in præteritum displicet, & in ...m prohibetur: sed & omnia secundùm constitutionem antiquam ad ...pi ordinationem & potestatem pertineant.* And in the Councell at ...m, of the yeare 658. Can 14. whereas the complaint was, *Quod ...ria per villas jam longo tempore constructa, & facultates ibidem ...ipsi quorum villæ sunt Episcopis contradicant:* The satisfaction ...*Hoc covenit emendari ita ut duntaxat in potestate sunt Episcopi.* Also ...Canon *Nullus Abbas &c.* of the Councell at *Westminster* related ...e in the matter of Parishes is much to this purpose. There we ...out of a *MS. Bibioth. Bod.* which is a continuation of *Marianus* ... Wee finde it also in the Continuation to *Florent. Wigorn.* by ...on whereof, looking better into our Manuscript *Marian*, wee ... that it agreeth, for the most part with this *Florence* of *Worcester.* ...rther to argue this dispensative Power in the Diocesan, he that is ...g to observe, may finde severall passages both of late and elder ...among the Records of *Sarum*, a sight whereof I had by the great ...r of my worthy friend, M. *Edward Thorneburgh*, one of the ...s Resident of that Church.

...e have seene how farre the Diocesan was concern'd in the ...tion & Endowment of a Church, or Monasterie, it remaineth, that ...now consider him, in that which appertaineth to the Filling. ...a Monasterie, certaine it is that none could be admitted, but by ...Bishops authoritie. This was determined in severall Synods, we ...onely the forenamed Councell held at *Nice*, because there also ...reason of this is set downe, let the Reader see the 14. Canon in the ...e Translation, set forth by *Turrian*; for those that are not so satisfi-... we shall shortly provide the Arabick Text, if we be not otherwise ...vented by those that are better able, or forced to forbeare for want ...Characters, As the Bishop was to belook't after, by those that would ...e into a Religious House, so also by those that would goe out, So it ...meth by the Law of *Alfred.* Gif hþa Nunnan of mÿn-...ne ût alæde butan cÿninger leafe oþþe Biscéoper; ...ylle hund tþentig scil: If any lead a Nunne out of a Mona-

sterie

sterie without the Kings leave or the Bishops, he shall pay 120 S[olidi] ings.

In the filling of Appropriations, which were made over to the R[eligious] ligious Houses, the Law saith that the Bishop had this power: That could binde the Proprietaries to set out for the Vicar Incumbent, a Convenable Portion of the Incomes, as the Bishop in his judgem[ent] should be pleased. to allot. See *Alexand.* 3 to the * Bishop of *Worc[ester]* *De Præb. & dig. C. De Monach.*

And there be, that are well enough perswaded that the B. even o[f] also ought in this Right to be acknowledged, and the ground is, that it may be likely to stand without injurie, to the *Statute* Dissolution For it seemeth by the 27. of *H.* 8. *c* 28, that these L[aws] are to be holden in as large and ample mannner, as the Proprie[taries] did then hold them, or ought to have done. And an other Claus[e] the same *Statute*, **Saveth to every Person and Persons, bodies politique, &c. other than Abbots, &c. all such title interest, &c. as they or any of them hath, ought might have had, &c.** But the consideration of this, I restore to from whom I had it. The late learned *Civilian* in the *Poore Vicars* where the Reader who desireth more of it, may be further sat[isfied]

Now it is to bee observed, how farre forth the Patron was to de[pend] upon the Bishop, for the filling of any other Church or Oratorie. proper to this purpose is the Emperours Novell, which was de[creed] little lesse then eleven hundred years past, about the latter end of the Centurie: Εἴ τις εὐκτήριον οἶκον κατασκευάσει καὶ βουληθείη ὁ κλησικοὺς προβαλλεσθ᾽ ἢ αὐτὸς ἢ οἱ αὐτοῦ κληρονόμοι εἰς τὰς διατάξ[εις] τοὺς τοῖς κλησικοῖς χορηγήσουσι καὶ ἀξίους ὀνομάσουσι, τοῦ ὀνομασθ[ῆναι] χειροτονεῖσθαι, οἱ δὲ τοῦ παρ᾽ αὐτῶν ὀπλεγέντας ὡς ἀναξίους ὡς ἀ[νεπι] ξίους κολύσωσιν οἱ θεῖοι κανόνες χειροτονηθῆναι, τὴν κατ᾽ ἐκ[κλησίαν] δοκιμάτατον ἐπίσκοπον οὓς ἂν νομίσουσι καλλίονας προβαλλεσθαι [τοὺς] πλείονας. Τῶν Νεαρ. ρκγ. Διαταξ. ιη. that is, If any man shal erect [an] ratory, & his desire be to present a Clerk thereunto, by himselfe or heires: if they furnish the Clerke with a Competencie, and nom[inate] (to the Bishop) such as are worthy, they may be ordain'd: B[ut] those who are intimated by them, be rejected by the Canons, as worthy of the Ministrie, then let it be the care of the most Reve[rend] Diocesan of the place, to present such as in his discretion he [shall] conceive better of. That we may the more certainly know, what [the] Emperor

erours minde is, it muſt be conſidered out of *Panormitan*, what is meaning and originall of the Patrous Right, which by the Canon is *Ius Patronatus*, and by the Common Law Adbouſon. The out of the Law ſaith, that this is *Ius honorificum, oneroſum & alicui competens in Eccleſia, pro eo quod Dioceſani conſenſu Eccleſiam vit, conſtruxit. vel dotavit, ipſe, vel is à quo cauſam habuit, Abb. in ric.* He therefore that founded a Church. (that is, *fundum dedit*, a piece of ground) *De Iur. Pat. C. Nobis.* He alſo that built a ch upon it 16, *q.* 7, *c. Monaſterium.* Or laſtly, he that endowed Church built. *C. Piæ Mentis ibid.* was thenceforth qualified with ight of Patronage. But all this while it is eſpecially to be noted, all this was done *Conſenſu Diœceſani*, which ſeemeth to have ſo requiſite by that of *Clement. C. Nobis. De Iur. Patron. Si quis Ecum conſenſu Diœceſani conſtruxit, ex Ius Patronatus acquirit*, that ſhould be refer'd to *aſſenſu*, nothing maks a Patron but the Wil Dioceſan. And it is to bee underſtood, that when a man diſch of his temporall eſtate towards the Founding, Erecting, or wing of a Church, whatſoever ſhall be ſo conferred, after conion, is actually delivered up, and made over to God himſelfe: fore it muſt neds bee, that from henceforth theſe things cannot rly belong either to the Biſhop or the Patron: for the Emperour *Quod Divini juris eſt, id nullius eſt in bonis. Inſtit. de Rerum ine. § Nullius.* Only the diſpenſation of thoſe things muſt be d to Men: And to that purpoſe, who of all men could be more n the Biſhop? It ſeemeth therefore, that the right of Preſentamay be originally in the Dioceſan, and wee ſhall finde it hath ſo, by a certaine paſſage, recorded in the life of *Biſhop Vlrick*, e the Author ſaith, That when any would build a Church in his ſorie, the Biſhop freely conſented both to the Erection and Conion: *Si confeſtim ille conſecratæ Eccleſiæ legitimam dotem in & mancipiis in manum ejus celſitudinis dare non differret, &c.* is anſwerable to what was before ſaid concerning the ie of a Church. It followeth in the Author. *Conſecratiperactâ doteque contradita comprobato illic Præsbytero is Procurationem commendavit, & Eccleſiæ Advocatiirmiter legitimo hæredi panno impoſito commendavit:* that Conſecration being ended, and the Endowment delivep, the care of the Altar was committed to the Prieſt allowed,

lowed, and the Advouſon firmely conveighed to the lawfull heire the putting on of a Robe. *Author vitæ Vdalrici, C.7.p.52. edit, Augu Vindel.* 1595.

It is now time to conſider how farre forth the Biſhop depo with this Right to the Lay Patron, and for what cauſes. Wee ſaid, that the Biſhops Right was not to the things themſelves, w being once appropriated to God, could be only his, but to the penſation of them, according to which it was neceſſarie, th Biſhop ſhould diſpoſe of the preſentation, and fill the places with Incumbents, as might enjoy them in Gods Right, and execute function anſwerably to the Founders good purpoſe, This Act Biſhops being (as by them it was accounted) more a matter of then Power, was uſually underſtood by the moderate expreſs *Nominare, Præſentare*, or *Commendare*, ſtill ſaving the Right to and to themſelves only ſuch a conſcientious diſpoſition theroſ, as redound to his greater glorie: This power the Biſhops transfe the Lay Patron, yet ſo as it ſhould be neceſſarie for the Patron recourſe to the Biſhop, that hee might qualifie his Clerke Rectorie by ordination, and that it ſhould be lawfull for the Bi deveſt the Patron of this Right according as hee ſhould be mo ſuch cauſes as were found to be of a conſiderable importanc ſeemeth by the Law where the Patrons Right is ſaid to be power *in qua eos Eccleſia huc uſque ſuſtinuit. De jur. Patron. C tam* The reaſon that moved the Dioceſan to let the Patron ſhare him in this prerogative, was for the Patrons encouragement, for muſt be conceived of this right, that it was an honorable privile therfore the Abbot in his definition did well to call it *jus honori* This reaſon, in reſpect of the Patron, tooke place, becauſe of the need which then was of thoſe, which were able, and would be ing to erect or endow a Church, for as much as all places at their ginnings were ever unfurniſht, for we ſhall finde in ſome that they no Churches at all, but inſtead of a Church they were content to prayers under a Croſſe in the open field: & this is reported of own Anceſtors in the Peregrination of *Wilibald. Sic mos eſt Saxo gentis quod in nonnullis nobilium, bonorùmque hominum prædiis, non E ſiam, ſed ſanctæ Crucis ſignum Domino dicatum cum magno honore a in alto erectum ad commodam diurnæ orationis ſedulitatem ſolent ha Hodœperic. Hieroſolym. Wilibald. Extat ad Caniſium. Tom.4. Antiq. L part.2. pag.* 486 *Edit. Ingolſt.* 1603. In other places there mig perh

haps be Churches, but ſometimes they were no better then thoſe
ch are ſpoken of by *Aſſer* B. of *Shireburne* in the life of K. *Alured*,
urches, of ſo poore and meane a ſtructure, that when the Candles
re ſet before the Reliques they were oftentimes blowne out by the
d which got in, not only *per oſtia Eccleſiarum*, but alſo *per frequen-
arietum rimulas*, as the Author there hath ſaid, inſomuch that the
nious Prince was put to the practiſe of his dexteritie, and by
ſion of this *Lanternam ex lignis & bovinis cornibus pulcherimè
uere imperavit*: by an apt compoſure of thin hornes in wood, hee
ht us the myſterie of makiag a Lantherne.

Theſe exigencies were the cauſes, which mov'd the Biſhops to give
encouragement to the Patron, and admit him into the honorable
oyment of Filling the Churches, but ſo as upon occaſion given,
ight reſume this right to himſelfe, which upon the abuſe there-
h accordingly followed.

hat the Laitie could never yet abide the Clergie, is noted in the
for an old ſaying. *De immunit. Eccl. C. Clericis. lib.* 6 and *Baſil*
Emperour in the 8. Synod could ſay of the Lay people of his time:
*multos malitia in inſaniam accendit, &c. ut quòd pedes ſint mi-
egitantes legem ponere velint oculis*: that malignitie had ſo ſet on
the madneſſe of ſome, that forgetting themſelves to be the feete,
would needs teach their eyes to ſee. But we are more happy, and
not make this our owne complaint, being no otherwiſe troubled,
with a very learned and moſt religious Laitie. But how the Lay
ns heretofore behaved themſelves in the matter in hand, we ſhall
(Though I mention only the Lay, yet I excuſe not the Clergie
ns otherwiſe then thus, that they were but few, and not ſo
y to wrong the Church in regard of their proper intereſt.)

The Patrons abuſed their libertie many wayes: if we conſult with
ſeverall Councels which have provided againſt this we ſhall find
ſometimes preſenting illiterate and unworthy men, Prieſts of
loweſt of the people: men that can thinke ſo meanly of the
ſſery, as to make ſuit to come into the Prieſts office for a piece of
d. 1. *Sam.* 2. This is noted in the Councell at *Colen. An.* 1536.
re they are ſaid to preſent their owne ſonnes, and kindred *citra
delectum aut diſcrimen ſcientiæ morum ac ætatis*. There alſo it is
plained that there were ſome, *qui admotis nomen tantum relinquunt*:
promoted the Incumbent only to a bare name, reſerving the
ue to themſelves, *auſu quodam ſacrilego*, as they are there cenſured
by

by the Councell, and ſome were ſo exorbitant in this kinde that they would preſent their young boys and children, as if by the ſame law Nature, they could beget Prieſts and men. *Concil. Palent. Conſt.* 1.

This is litle better then that of *Micha*, the man of mount *Ephraim qui ipſe ſibi fecit ſacrificulum.* though this might be well endured, the Sonne ſhould make the Prieſt, when the Mother & the Father had made the Gods. But this was done too, when there was no King in *Iſrael and every man did that which was right in his own eyes.* היה זה סכח להעשות זה הפכול otherwiſe ſo a bominable act could never have paſsed as the ſon of *Gerſom* hath obſerved upon the place.

The Councell of *Saltzburgh*, under *Martin* the 5. telleth us of certaine Patrons that uſed to compound with the Incumbent for the Moyetie of the profits, and this in the *Garman* Councell under *Prague* is ſtyled *vulnus cancroſum et ſimoniacum.* And ſee to this purpoſe the Councel of *Wormes* in 886. *& Vt Presbyteri.* Others not content with a part of the obventions made, the bargain to have halfe: in the ſecond *Bracaran* Councell. C.6. we finde ſome that built Churches, *non pro devotione fidei, ſed pro quæſtus cupiditate:* not for devotion, but filthy lucre; that they might ſhare alike with the Incumbent in the offerings of the Church.

Sometimes it fell out, that the ſame Church had ſeverall Patrons and theſe in the vacancie, for the moſt part, diſagreed about the preſentee, and this was a great inconvenience, for in the interim during their diſcord the Biſhop was to take away the Raliques and ſeals of the Church. Some Patrons for their Preſentations expected to be gratified with gifts and largeſſes and the like: and againſt this it was provided in the *Nanneien* Councell. C. 16. And the Councell at Aix under *Charles* the great expreſly forbidderh the Lay Patron, *munera exigere à Præbyt. propter commendationem Eccleſiæ* See alſo the *Capitul. Addit.* 3. C 63. *&* 30 of the Councell of *Mentz* And it was the common plaint of the *Palentine* Councell, that the Patrons Sons and nephews were wont to exact great dinners of the Rectors, as if they would feed upon the Incumbent, and eate out their preſentation. And theſe things (ſay the Fathers of that Synod) *Relatione certa didicimus* we are credibly informed. *Conſc. Pal. a.* 1322 *Conſtit.* 14. We find also that the Patron, ſomtimes for his own profit in the vacancy, would reſerve the Preſentation during his pleaſure. Therefore it was decreed by the law of *Laps*, that all Parrons ſhould preſent after a certain time

downe: where we are to note, that the Canons allowed the Clergy ron 6. Moneths libertie, & the Lay Patron but 4. And though this uld not be received by the Common Law, yet what needed the bent to tell the Doctour that hee ſaw no reaſon why a rke ſhould haue moze reſpect than a Lay-man, but rather contrarie. C 31. whereas it is one of the greateſt puniſhments a Church man can have to be degraded from his Miniſterie, & ed into a lay-man, But to go on, Some there were among the ons that had ſo litle conſcience, as to preſent their Clerke for his y: this is ſharpely reprehended in the Councell at *Tours c.* 15. *An.* 3, where alſo it is ſaid to be *vitium late diffuſum*: a corruption ſpread and wide. Some other there were ſo wretchleſſe as to rob the rch, after the Rectors deceaſe, of her dowrie: *rebus mobilibus, & dum immobilibus*: as it is noted of them in the Councell as burge. where is called *deteſtabilis corruptela. C. Nonnulli &c.* And *ad extirpand.* It ſeemeth alſo by the Councell at *Meaulx.* that the lls were ſometimes employed by their Patrons, *ſeculari negotiatione illicatione turpi*, in ſecular negotiations, and the meaner offices of andrie. The Prieſts indeed are called Paſtours by the great Shepard of Iſrael, but this muſt not be miſtaken, for when it is ſaid that Miniſter muſt attend his flocke, the meaning is not that he ſhould e ſheepe. Theſe and many more were the Patrons enormities which hee that liſteth further to enquire ſhall be ſooner weary ding than of ſeeking them. We have reſerved for the laſt place which of all other is moſt horrible, T'was enough to debaſe the mbent, and deſpoyle the Church but *horrendum eſt dicere*, ſaith the *Lateran* Councell *C.* 45. *quod in necem Prælatorum prorumpere non idant*: 'tis a horrour to report it, that nothing would content the ons but the life and blood of the Prelates, &c.

Upon the riſing of theſe inſufferable exorbitances, the Biſhops d for their right againe, but the redreſſe was not made all at once, ſo ſoone in one place as another, to which varietie diligent heed be given in reading the Councelles to this purpoſe. The moſt ble reformation was attempted in the 3. *Lateran* Councell, where authoritie, and conſent of the Biſhop is ſtrongly reinforced. *Nos , cum Laici non poſſunt niſi jus quod habent in alios transferre, ſmodi conceſſiones viribus carere decernimus, & penitus irritas eſſe*, So *Lucius* in the Canon of the Printed Coppie: but in *MS. Bibl.*

Bod they are the words of *Alexand.* the 3, to the Abbots, Priors &c. and the whole Clergie of *Yorke* Dioceſſe. This decree was accepted and ratified here at home, as appeareth by the Synod holden in the year 1200. where every man is expreſly forbidden *ex tenore Concilii Lateranenſis, Decimas vel alia Eccleſiaſtica beneficia ſine Epiſcopali authoritate de mann Laici accipere:* according to the tenor of the *Lateran* Councel, to receive any Tythes or Eccleſiaſticall living from a Lay-mans hand, otherwiſe than by Epiſcopall authoritie.

arrogateth this right unto himſelfe, as a Prerogative of the Apoſtolike See, to grant theſe privi-edges to Religious orders, to take and receive Benefices at Lay mens hands, by the mediation of the Dioceſan, whoſe office it was to be a meane betweene the Religious houſe and the Incumbent for in indifferent rate, that neither of them ſhould preſſe too much the one upon the other: and therefore in the beginning, the uſuall rate that they ſet downe betweene the beneficed man, and the Religious perſon was the one halfe of the Benefice; ſo that it was not thought that the Pope would charge a Church above that rate. But after by the covetouſneſſe of Monkes and Friers themſelves and the remiſneſſe of Biſhops who had the managing of this buſineſſe under the Apoſtolique See, the Incumbents part came to ſo ſmall a portion, that *Vrban* the fifth, by *Othobon* his Legate here in England, in the yeare of Salvation 1262. was faine to make a Legantine, whereby he forbad all Biſhops of this Land to appropriate any more Churches, to any Monaſterie, or other religious houſes, but in caſes onely, where the perſons, or places to whom they were appropriated were ſo poore

is that otherwiſe they were not able to ſuſtaine themſelves; or that the cauſe were ſo juſt, that it might be taken rather to be a worke of charitie, than any inforcement againſt Law: and that beſide with this proviſo; as that if the new proprietaries within ſixe moneths next after, ſhould not ſet out a competent portion for the Miniſter, of the fruits of the Benefice, themſelves ſhould aſſigne out a ſufficience thereout, according to the quantity thereof: which conſtitution, becauſe it tooke not the effect that was hoped, there were two Statutes made, the one by *Richard* the ſecond, the other by his ſucceſſor *Henry* the fourth, both for the conſtable indowment of the Vicar, there to doe divine ſervic, and informe the people and to keepe hoſpitalitie among them.

Albeit moſt of theſe Appropriations were principally in Monkes and Fryers, and ſuch other religious perſons, yet were not Biſhops Sees. and Cathedrall Churches altogether free from them, as I have before ſhewed in the Cathedrall Church of *Saliſburie*. to whom *Henry* the firſt appropriated more twentie Churches in one day: and the See of *Wincheſter*, which hath had two benefices anciently annexed to the Biſhops table, the Parſonage of *Eaſtmeane*, and the Parſonage of *Hamble*. Neither do I doubt, but the like was done in other Biſhops Sees, and other Cathedrall Churches, if I had as good inſtruction to report of them, as I have had information to ſpeake of theſe.

And ſo farre as concering the firſt effect of Priviledges, whereby ſundry fat Benefices have been

injuriouſly drawne from their owne Church and unnaturally appropriated to Monkeries Frieries, & other ſecular, & religious places; whi as I have ſaid, hath bin partly the act of Lay m & partly of Eccleſiaſticall men.

SECT. 5.

Exemptions from Tythes brought in by Pope Paſch *favour towards all ſorts of religious men, how they have beene reſtrained by Pope* Adrian.

C. Ex parte tua. gloſ. in verb. laborum de Decim,

NOw followeth the ſecond effect hereof: that is, the exemption of theſe Religi mens poſſeſſions from payment of Tythes which a priviledge of the Pope alone: for Monkes ancie ly paid Tythes of their land, before theſe privile ges, as other Lay-men did. But *Paſcalis* the ſeco caſting a more favourable aſpect towards Monk and other Religious men than any of his Predec ſours before time had done, did order toget with the Councell of *Ments*, That neither Monk nor other Religious perſons, or any other t lived in common, ſhould pay Tythes of their o labours: Which immunitie in proceſſe of ti Pope *Adrian* recalled, ſo farre as it concerned t reſt of the Religious perſons, and limited it to t *Cyſtertians*, *Hoſpitallers*, Templers, and thoſe whi were of the order of S. *Johns* in *Jeruſalem*, leavi onely to the reſt freedome from paying Tythes lands newly broken up, and laboured with the owne hands, and of their garden, and of the

Eod. in dicta gloſ.

catt

rell. In which ſtate the matter ſtood untill *ocent* the thirds dayes, who although hee were o other point of better mould than the reſt of Popes were; yee was he in this more pittifull ards poore Incumbents of Pariſh Churches, n any of his predeceſſours had bin; who ſeeing reby the inconveniences of beggery and ignor- ce that grew upon ſundry of the Parochian ſts, by meanes of theſe Priviledges, ordered in ſecond *Lateran* Councell, holden in the yeare grace 1120. that for ſuch lands as any of the ſaid re Priviledged orders, ſhould acquire, and get r the ſaid generall Councell, they ſhould pay thes, or compound for them as other men did, though they laboured them with their owne ds, or manured them at their owne charges ich conſideration alſo moved *Henery* 4. King of Realme, to provide by Statute, firſt, that ſuch he ordet of *Cyſtertians*, ar had purchaſed Buls. be diſcharged of Tythes ſhould be reduced into ſtate, as they were before: Then, that no per- Religious, or Secular, by colour of any Bulls, taining any priviledges, to be diſcharged of nes pertaining to any Pariſh Church, nor put in cution, or ſhould purchaſe the like in time to e. Wherby it is very probable: that few of ſe lands which are now challenged to be free of thes by the Statute of the 31. of *Hen.* 8. are of Tythes indeed: for that they are no other- freed by that Statute, than that they were freed in the Religious mens hands; ſo that if y were never freed in their hands, they remaine

C. nuper Abbates de decimis.

An. 2. H 4. c. 4.

An. 7. H. 4. ca. 6.

31. Hen. 8. c. 13.

ſtill charged with Tythes. But betweene this in-
terruption of not paying of Tythes, wrought b
Innocent, in the ſecond *Lateran* Councell, and th
diſſolution of Monaſteries, effected by *Henry* th
viij are three hundred and thirty yeares and be-
tweene the fore ſaid Satute, made in the ſeven
yeare of *Henry* the fourth, and the ſubverſion of th
Monaſteries, brought to paſſe by *Henry* the eigh
as hath beene before remembred, are one hundr
and thirty yeares. In which long diſtance of ti
the one from the other, it is not to bee doubte
but many of thoſe Religious Houſes were built a
indowed, which by no poſsible meanes could be
partakers of thoſe priviledges which were aboli
ed before the time of their erection: neither w
there any reviving or renewing of theſe privileg
by any Pope of *Rome*, or Prince in this Realm
after they were thus firſt repealed by the Pope a
Prince aforeſaid, for ought that I have read, o
heard to the contrarie.

So that if this matter were well underſtood, a
the ages and orders of thoſe Religions perſo
from whom the clayme is made, were right
conceived, it would give great light unto th
Judges, to diſcerne what lands were exempte
from the payment of Tythes, and what not: fo
now many are pretended to bee exempted fro
Tythes, which never were of any of thoſe fou
Orders, and if they were, yet were they not befo
the time of the interruption, but ſince.

SECT

SECT. 6.

Mutuall compoſitions for Tythes, are the deviſe of Eccleſiaſticall Lawyers, and are to be tried by the Eccleſiaſticall Courts.

AND ſo farre as concerning the ſecond effect of theſe Priviledges. Now it followeth that I make a word or two of Compoſitions, which are agreements betweene perſons litigant, whereby either partie may know their owne right, and not ſtrive againe about doubtfull matters. As good lawes have growne out of ill manners, ſo Compoſitions have riſen out of quarrels, cauſed by priviledges, and other like exemption for matter of Tythe: wereof, although there bee no ſpeciall treatiſe in the Law, as there is of the reſt, yet they are ſo often mentioned by the Decretals themſelves that it is not to bee doubted, but that they are part of the Eccleſiaſticall Law, as well as the reſt are, and that they are the deviſe of the Eccleſiaſticall Lawyers, and not the conceit of the Common Lawyers; the forme and ſtile of them doth well ſhew, which ſavoureth wholly the manner and phraſe of writing of the Eccleſiaſticall men, and, hath no touch of the Common Law at all. And if the deviſe bee the Eccleſiaſticall mens, as all Biſhops Regiſters every where doe ſhew, which are full of theſe compoſitions, why ſhould not alſo the triall bee theirs, that every cauſe might have his ending, where it hath his beginning? *Eorum enim eſt legem, interpretari, quorum eſt condere.*

SECT. 7.

That the curiositie of School-men, in their distinctio upon Tythes, have helped forward Appropriati and Exemptions from Tythes. The Opinion amined, as concerning the Quotitie of Tyth whether it be Morall, Ceremoniall, or Judiciall.

AND these are those greevances of the Churc which I said the School-mens curiositie their distinctions, either invented, or gave streng unto them after they were invented; but inv them all, I thinke, they did not, for that these A of Appropriations of benefices were some wh more ancient then the School-men themselves a but the rest of the Priviledeges, they either ca into the world with them, or ensued anon af them, so that I may well say, they much stre thened this iniquitie. For when that every m understood by their Doctrine the quotitie Tythes, or the tenth part thereof was not precis by Gods Law (since the light of the Gospel spr out as the day light unto the Christians, who b fore sate in darkenesse, and in the shadow of death but that it was by the institution of the Churc only; then began they freely to spoyle the Churc of her due Tythes, and to give away that to on Church, that was due to another. And the reaso that perswadeth the School-men to this, was th after much adoe, dividing the whole Law of Mos into three parts, the Morall, the Judiciall, and the Ceremoni-

Ceremoniall; they did conclude, that there were three parts likewiſe in the Tythe, the one Morall, which was a neceſſarie maintenance for the Miniſter, and therefore was naturall and perpetuall: the other Judiciall, which was the number of ten, ſit, as they taught, for that people onely, and therefore was poſitive and remotive: the laſt Ceremoniall, and that was the myſterie contained in this Quotitie, or number of Ten, which being but a ſhadow onely, was aboliſhed with the Law it ſelfe: whereby they did inferre the preciſe number of ten being taken away, by reaſon of the Ceremonie it ſelfe, a competencie now onely doth remaine for the Miniſter out of the Tythes: which opinion hath beene well confuted of late, by a very learned man, as his Treatiſe thereof doth well ſhew; and I feare with leſſe ſucceſſe, than the truth of the cauſe doth deſerve, for this is a point that toucheth many mens private benefite, and therefore will have no more favour than it needs muſt.

But the deviſe whereon the School-men did build this Ceremonie is this, that as all Digits under ten are unperfect, and doe tend to ten as to their perfectneſſe; ſo all men, ſave Chriſt alone, are unperfect, and have need of Chriſts righteouſneſſe to make them perfect: Which *Abraham* well knowing, paid Tythes to *Melchiſedech*, who was the figure of Chriſt, as therein acknowledging, that himſelfe and all mankinde, who were repreſented by the other nine Digits were unperfect by reaſon of Originall Sin dwelling in them, and therefore had

Thom. in quodlibet part. 3. art 6. q. 6.

Idem part. 22. q. 87. art. 1.

had need to bee perfected by Christ, who w
figured by the tenth number.

All which that we may grant to be true be
tweene Christ and all mankinde, as it is true indeed
and that ten is the perfection of the other nu
bers under ten, for that all the rest of the Digi
when they come to ten, returne back againe t
ten, and are multiplied by the coupling of the
selves with ten: yet, where is this proportion be
tween Christ and ten in the Scripture, that shou
make this Ceremonie? which if it cannot be foo
any where, nor any consent of the primitiv
Church shewed for it, as I thinke it cannot be, th
may it with as good authoritie be rejected as it
received. For albeit *Thomas Aquinas* himselfe w
tearmed a Seraphicall Doctor, that is, such a
as had a sense in the understanding of the ho
Scripture above all others of his age, and that
did much profit the studie of Divinity, with
wittie distinctions: yet is not his authoritie suc
that it must prevaile in cases of Divinitie, witho
the authoritie of the Scripture, and the consent
the ancient Fathers of the primitive Church, i
terpreting this peece of Scripture in that sense as
doth, which would make a sweet harmony if
might be had.

Iunius in 2. c. 3. Geneseos.

And therefore as to my poore sense, better sai
a learned man of our time to this point, writ
upon the Sabbath day in the second of *Gen*
which may be also proportionably understood
the tenth, for that they were both before the L
in their very number, and were but repeated b
Mo

ſes under the Law, becauſe they had beene proved by God before the Law in the ſelfe ſame numbers: and that which hee ſaith of the Sabbath is this, that albeit it hath a Ceremoniall deſignation of the day, that is, that it doth figure unto our perpetuall reſt, which we ſhall have in heaven, after that there is a new heaven and a new earth, yet there is therein two parts, the one naturall, the other poſitive, as that God ſhould have a ſeventh day of worſhip, this is Naturall, and therefore doth remaine, becauſe it is perpetuall: but that this ſeventh day of the Lords worſhip ſhould be the ſeventh after the Creation of the world, this was poſitive, and therefore was changed by the Apoſtles and bleſſed men of the primitive Church, into the ſeventh day after the Reſurrection of our Saviour Jeſus Chriſt: which, as it is verified by them in the Sabbath, ſo may it be in like ſort vouched by like reaſon in the tenth, wherein alſo by the ſemblance there are two parts, the one naturall, the other poſitive. The naturall is this: that God hath of all the fruits of the earth, the increaſe of cattell that are worthy of him, and fit for mans uſe, ſhould have a tenth, both in the acknowledgement of his univerſall government over us, and alſo for the proviſion of his miniſters, and therefore this remaineth: & in that ſence immediately after the diſolution of the Jews policie, the good Chriſtians of the Primitive Church, as ſoone as they could get any outward forme of a Church, and peace from perſecution received it in very quotidie, as a thing no leſſe belonging to their Miniſters,

than

than it did appertaine to the Priests, & Levites o the Law: But that the Lord annexed these Tyth by *Moses* to the Priests & Levites for their mainte nance, during the time of the dispensing of th mysteries under the Law, this is positive, an therefore changed by the good Christians in th Primitive Church, from the Jewes Ecclesiastique to the Christian Ecclesiastiques.

Neither can it be thought that this numbe came from the Judiciall part of the Law, as a fit proportion to maintain one Tribe, out of the revenues of the other eleven Tribes: for that this number, or quotitie, was revealed to be God long before the Law, and before there were any such division of Tribes among the people of Israel which then were not, but were parted afterward by *Moses* into families according to the number of the twelve sonnes of *Jacob*. And therefore it is not to be presumed, that the Law which came long after, imprinted a forme upon that. which was so long in beeing before there was any Law or Ceremony. But as the Apostles, or prime Christians, when as they did first change the day of the Sabbath by divine inspiration, or otherwise, from the day of the Creation, to the day of the Resurrection, durst not substitute any other day into the place of the first day, than a seaventh; for that the Lord had revealed his pleasure in many places of the Scripture as concerning that number, for his day of worship, so that no other day could be appointed for his day of worship than a seaventh: So neither durst the good Christians of the

Primitive

imitive Church (moved no doubt with no other
ſtinct then the other were, when they tranſlated
is proviſion of Tythes for their miniſtery from
e Jewiſh Church unto their owne Church)
nge the number of ten into another number
ides, more or leſſe: For that God had no leſſe
nifeſted his will in ſundry parts of the Scrip-
re, as concerning this number, to be a number
r the maintenance of his miniſtrie, than he had
clared his pleaſure as concerning that other
mber to be a day for his honour, challenging it
ery where in the Scripture, in the very quotitie
r his owne right, and counting it robberie if it
re at any time with-holden from him. And
erfore it may be well thought, the School-men
rein did great wrong to the Church, who by
ir quaint diſtinctions brought this certainty in-
o an uncertainty, which is no where to be found
Scripture. Which I am more bold to ſpeake,
r that I ſee ſome have trod this path before mee,
d ſhewed by good demonſtration, that the turn-
g of this quotitie into a competencie is a thing
thing warrantable by the word of God, but that
e quotitie ought ſtill to ſtand as a perpetuall
ght due to God and his Church. But hereof
herto.

CHAP. V.

CHAP. V.

SECT. 1.

That a Biſhop being Lord of a manor, and pri Founder of a Benefice, could not in the firſt erec on thereof by his own capacity, retaine any Tyth in his hand, and paſſe the ſame after in Lay fee his Tenant, and ſo give cauſe to his Tenants preſcriptions againſt the Parſon.

AND ſo having paſſed over this whole proſo of Law, Statute, Priviledge, Preſcriptio and Compoſition, I might well leave the turn of this ſtone any more, but that yet there rem eth one Prohibition of preſcription to be hand which in my fancy is worſe then all the reſt, that it draweth away from the Parochian Chur her maintenance, and transferreth it upon Lay: that which is worſe, it makes Biſhops to be inſtru ments hereof, who are to be Patrons and defe ders of Churches, and not pillers or powlers the ſame. And yet the authors thereof do imbra it, and kiſſe it as a golden birth, or as if that J her ſelfe had been preſent at the Nativity there And the deviſe is this.

A Biſhop being owner of a Mannor yet not di vided into Tenancies, not having any Parſonag erected upon it, ordaineth the one, and divideth out the other: here the Biſhop being ſeiſed in the whole Manor before the ſaid diviſion, becauſe he is

Clergy man, is ſuppoſed to be in poſſeſſion as
ll of the Tythes, as of the Manor it ſelfe, and
erefore after creating a Parſonage, and dividing
his Tenancies, may retaine and keep to him-
, and his ſaid Tenants, ſo much of the ſaid
nor diſcharged of Tythes as him liſteth, and
gne over the reſt for the maintenance of the Mi-
er, and that his Tenants after may challenge
emption from Tythe, as the Biſhop did, for
t they were exempted by his capacity while
y were in his own hand.

Neither of which is ſo by Law; for inſomuch
a Biſhop is an owner of a Mannor, and is a
me founder of a Benefice, he hath no more
t to the Tythe thereof than a meer Lay Pa-
n hath, who for his zeale to the Church, and
incourage others to be like affected to Gods
gion as himſelfe is, may have ſome ſmall penſi-
ſigned him and his for ever by the Biſhop out
the ſame benefice, in acknowledgement of the
fting, founding, or endowing thereof: but for
portion of Tythes to him or his, he could ne-
retaine any, nor can to this day, neither yet
the Biſhop himſelfe, unleſſe perhaps hee will be
to *Ananias* and *Saphira*, which held part of
price of their ground from the Lord, and *Actorum.5.*
re worthily puniſhed for the ſame. And as they
not detaine it themſelves, being ſpirituall men, *Ca. quam*
much leſſe can they paſſe it over to any Lay *vis de*
, for that Lay people neither by Gods Law, *decimis. &*
ther by Canons and Decrees of the Church, *ibi Abnum.*
re ever capable of them: yea, it was ſo farre *5.*

off

off, that ever any Biſhops durſt inſeoffe any
man in Tythe; that whoſoever did it, was to
Ca. tua nobis de decimis. depoſed and excommunicated untill ſuch time
he reſtored the ſame to the Church againe. A
to ſay the truth, Tythes were never at any time
Biſhops as in Fee, but in very few caſes, as whe
the Biſhop had a Pariſh himſelfe, diſtinct from o
ther Pariſhes, for ſundry Biſhops in ſundry pla
had ſo, and then the Tythes of the Pariſh did be
long unto them, in ſuch ſort, as they doe now be
long unto the Incumbents thereof: Or, if
Tythe were not within any Pariſh, for then in
ſort it did belong unto the Biſhop of the Dioce
in whoſe Territory it was; albeit, now wi
this Realme it belongs unto the King: or wh
the Pariſhes were undiſtinguiſhed, for then
they the Biſhops, not to convert to his own
but to divide among the Miniſters and Cle
which laboured in the Dioceſſe, under him,
Preaching, Teaching, Miniſtring of the Sac
ments, and executing of other Eccleſiaſticall fu
ctions, every one according to his deſert: Or t
it were the fourth part of the Tythe, for then
it belong to the Biſhop in Law, towards his o
reliefe, and the repairing of the Pariſh Chu
where they grew, and not to conferre or beſto
the ſame, as him thought beſt, which notwi
ſtanding now alſo is grown out of uſe, and n
thing left unto the Biſhop from the Churches
his Dioceſſe, beſide his Procurations and Sy
dals, to be paid by the Imcumbents in the time
his Viſitation. Beſide which caſes, it cannot
found

d, that ever any Biſhop had to doe with
hes, much leſſe to alyen, diſpoſe, and trans-
e the ſame as him liſted, and to whom him
ed.

SECT. 2.

Biſhops endowments in the beginning ſtood not in Tythes, but in finable Lands.

Or it is very certaine, Biſhops endowments themſelves. in the beginning of the Primitive rch, ſtood not in Tythes, but in good Tem-ll and finable Lands, which gracious Princes, other good benefactors of former Ages be-ed upon them, as it doth appeare out of the booke of the Code; where ſundrie Lawes of *ntine* the great, and other gracious Emper-, even to the time of *Juſtinian* himſelfe are rded, both for the conferring of Lands upon Church, and thoſe ſuch as ſhould neither be n, neither charged with Statute, or other of the Exchequer, as alſo for the conſerving ſafe keeping of ſuch Lands as were in ſuch ſort rred, and beſtowed upon them: and it is man. alſo out of our owne ſtories, both in the *ns* time, during whoſe Raigne there are re-ed to have beene fifteene Archbiſhops in the of *London*, well endowed with poſſeſſions, and y were Archbiſhops, then muſt it neceſſarily follow there were Biſhops, for that theſe are ſtive one to the other. The like is written of

C. de ſacroſanct. Eccl. & de Epiſ. & Clericis tot titul.

Authent. multo magis C. de ſacro ſanct. Eccleſ

Iocelin of Furnis in his booke of Britiſh Biſhops. Stow fol. 37.

the Saxons Raigne, under whom the See of Canterburie, the See of *London*, the See of *Rochester* and the See of *Yorke* (for these foure were first set up againe after the Saxons first received the faith at the Preaching of *Augustine*, *Melitus*, and *Justus*, *Paulinus*) are namely reported to have been inriched with large Dominions, and possessions given to every of them for their maintenance. And what course hath beene held with Bishoprickes erected since the Conquest, the ruinated state of them, and others doe shew, amongst whose ancient livelihood is not to be found any indowment of Tythes, but such as of late come unto their hands and that for the most part, by change of their good fineable Lands for impropriate parsonages. Wherefore much to blame are some of our times who (when as their predecessours in former ages never admitted of any impropriate parsonage into their possessions, but onely in such cases as have beene before remembred) for the name and pride of a Bishop will be content to make *Glaucus* change with *Diomede*, that is, give their golden Armour for the others brazen Armour: or doe like as *Roboam* did, who in stead of golden shields, that his father *Salomon* did hang up in the Temple, put in their places shields of brasse: for the change no better, and so well know they that procure the same, otherwise would they never so instantly desire it.

Hen. Huntington lib. 3.

Charta reg. Ethelberti, & charta Will. primi. Stow fol. 77

Homer. Iliad.

Regum 1. c. 14.

SECT.

SECT. 3.

t the turning of Biſhops indowments into tenthes, r Tythes for impropriate Parſonages is unſutable the firſt inſtitution, and, very dangerous.

Nd therefore an unſutable deviſe was that, and contrary to the courſe of former Ages, h was procured in the firſt yeare of the late ed Queene, (not, as I thinke, by her owne g, for ſhee (good Lady) did in this as ſhee directed, but upon ſome other policie) that it ld be lawfull for her to take away ſo much ble Land, from any of the Biſhops as ſhee plea- nd to give them backe againe in lieu thereof hes, or Parſonages impropriate, which hath t them up againe but with unſutable peeces ir coate; whereby they are both brought obloquie, as though they detained the due ſion of the Parochian Church from it, and t in a way ready to be overthrowne if every haue his owne feather againe.

d therefore thoſe good Emperours are moſt hy of commendations, that when they had ccaſion to make change of Landes whith the ch, would ſtill allow them the like in value or : for a ſmall gaine it is unto a Prince for a thouſands of increaſe of temporarie benefices his Exchequer, to draw a perpetuall loſſe a Church, or Biſhopricke: for ſo deere ought Spirituall ſtate to be unto a Prince (upon whom

Authent de non alten- and. treb. Eccleſ. &c. §. ſi minus.

whom God hath beſtowed ſo many Kingdomes and other things of price as hee hath done, and put ſuch an infinite number of people in ſubjection under his feet) that hee would not in any caſe be hard with God, but thinke every greateſt liberty towards God and the Church to be the beſt.

Dic. §. ſi minus Authent. ut ſuprà.

For certaine it is the Empire and Church do not much differ the one from the other: for as the Empire doth governe the outward man, and frameth him by outward policie to be a good and loyall ſubject to the ſtate: So alſo the Church frameth the inward man by the word of God, and cauſeth him not onely to be a dutifull ſubject unto the Prince, but alſo to be an acceptable ſervant unto his Maker: So that there muſt be had as well an awfull care of thoſe things that are conſecrated to God, as there is a heedfull regard had of thoſe things that belong unto the good of the Common ſtate: for the Church was not made of God for the Common-wealth, but the Common-wealth for the Church. And therefore moſt gracious hath been the conſideration of our deare Soveraigne, who to ſtop all importunate ſuits made to Biſhops, for the granting away of any of their revenues to himſelfe, or any other, and to meete with the too eaſie facilitie of many Biſhops, in yeilding unto ſuch ſuits; of his Chriſtian, aud Princely pietie and care hath made a Law, whereby to protect the Churches poſſeſſions from alienation, or diminution, that they may remaine, and continue, according to the true intent of their foundation, to their ſucceſſours for ever, to the uſes and purpoſes therein limited.

Anno primo Iacob. Regis. cap. 3.

SECT.

SECT. 4.

t it had been a worthy work in the firſt refor-
ers of Religion, if they had returned to every
Pariſh their owne Parſonage; and the diſlike that
God may ſeem to have conceived of that.

) Ut here is occaſion offered by the example
) of our gracious King, to wiſh that ſuch as
e authors to the King, for the diſſolving of Mo-
eries, and other houſes of Religion, had been
iſe Councellers to him for the reſtoring of
ppropriated Parſonages and Tythes, which
e as it were, in captivity under thoſe houſes of
gion unto their proper pariſhes from whence
were taken. Which had been a memorable
k, and eaſie to have been perſwaded, the King
ng ſo many great mountaines of temporalities
Seas of goods, and chattels come unto his
d: ſo that theſe ſpiritualities would have ſee-
matter of ſmall account unto him in compa-
n of thoſe other great riches and poſſeſſions,
came unto him. Which if it had been done,
bleſſed a ſtate and Church had this been,
n every congregation ſhould have a ſufficient
viſion to maintaine a learned Preacher among
m: for ſo was it by the firſt inſtitution, and ſo
inued, till violence, and ſuperſtition changed
But I feare thoſe men which began this worthy
k, had not ſuch a ſincere mind towards Al-
ghty God in this reformation, as they ought

to have had, but that they ſought therein th
own advancement, more than they did the gl
of God; which I doubt mee, leſt God hath
membred in ſome of their poſterity, which h
left in great ſtate, have either ſo vaniſht away
that their place is ſcarce to be found, or elſe
ſo continue, as that their poſterity ever ſince h
been as it were in a minority, ſo that they ar
though they were not, great in place, but ſm
reputation: yea the three faireſt branches,
boughs that ever were in the world, iſſuing o
that tree, under whoſe ſhadow all theſe th
were done, are quite gone, and live by no
poſterity, but by their own worthy fame, and
rious acts, which they did in their life time;
alſo now being gone, doe follow them, and ſo
doe unto the worlds end, for they were all
memorable Worthies in their place. So d
rous a thing it is, to mix our own ambition,
ny other carnall conſideration with Gods gl
But, God be thanked, ſuch is the carefull con
ration of our moſt gracious Governour, that
is, in this behalfe, that it may be hoped, that
will remember him, and his poſterity in goodn
according to all that good that hee hath don
the Church, that hee and his poſterity after h
may ſit upon his Seat ſo long as the Sunne
Moone endures: for certainly, his godly and
cious comportment, hath been ſuch hitherto,
that he may be verily thought to be a man acco
ding unto the heart of God, as *David* was. B
no

to the loſſe that comes to the Church by theſe
opriations.

whil'ſt the Parochian Churches ſtood in their
ialities, that is, while they did enjoy the na-
l endowments due unto their place, that is, all
er of Tythes, and other Eccleſiaſticall duties,
ing and ariſing within the compaſſe of their
h, due by the word of God, they preached
their Congregation, they prayed for them,
miniſtred unto them the Sacraments, they
hoſpitality among their Pariſhioners, and re-
the poore, ſo farre as their portion would
unto; which was a comely thing to behold,
table to God, comfortable to their Pariſhio-
and convenable to their calling: but after
me were appropriated to Religious houſes,
good courſes were much diſguiſed: for albeit
Religious men, to whom theſe Parochian
rches were annexed, did much pray for thoſe
gregations, as they pretended, from whom
had the fat of the Benefices, yet they Preach-
ittle to them, kept ſmall hoſpitality among
n, or did any other ſpirituall work belonging
my Paſtorall charge; yet notwithſtanding the
le inſtitution, for which benefices in the be-
ing were erected, was not altogether extinct
them, but there was ſome outward ſhape or
me of the firſt ordinance left them, ſo farre
h, as that they made continuall prayers and in-
ceſſions to God for them: but when it came
e into the Laities hands, there was not ſo
ich as a foot-ſtep left of the firſt inſtitution, for

they neither preach unto the people, pray f
them, nor keep any hoſpitality among them, b
ſpend all the whole revenues of the Church, up
their private uſes, which many times are unfit f
ſuch Spirituall proviſion to be ſpent in: ſo th
for the benefite of the Church, the returne of th
might be well wiſht, albeit in ſo farre as they a
perplexed and intricated by the Lawes of t
Land, with private mens ſtates, it would be ha
to be performed; for the changing of them wo
be much like, as if a man ſhould move one ſtone i
a vaulted work, ſuch as the ſtony roofes of m
Cathedrall Churches and Colledges are, wh
the taking of one ſtone away is the jeopardy
the whole building: But yet let thoſe to wh
this doth appertaine, conſider whether in thi
were better to pleaſe God, then man.

CHAP. VI.

SECT. 1.

That Tythes are a Parochian right, and how Pariſhes in the Chriſtian world, came firſt to be inſtituted.

BUt now to returne thither where I left: a
every good Biſhop, or any of his Clergie, di
win any Conntrie-village, the Latins call *Pagus*, t
the Faith; ſo they erected up a Church there, and
appointed a Paſtor or Miniſter over them, to info
rme

them in the Law of God, and to miniſter the raments unto them: and ſet out for his main- nce the tythe of that Page, or Village, to which was aſſigned Paſtor: which they did in Tythes, er then in any other proviſion, both becauſe it the Lords inheritance in all ages, and appoint- by him for the maintenance of ſuch as ſerved in Tabernacle, during the diſpenſation of the my- ies of the Law, and now was returned againe Gods hand by the expiration of the demiſe of n, made unto the Levites, during the ſaid time ſpenſation; & alſo becauſe the people would ore eaſily induced to part with one part out of y ten, of all the fruites of their grounds, and urs of their hands, unto the Miniſter, then if e had beene any other regular impoſition laid n them: for certaine it is, Villages and Pages e more hardly and more lately unto the Faith, n great Townes and Cities did; and thereupon w that name of oppoſition, which was between riſtians that dwelt in Cities, and the Infidels dwelt in Pages, that the one were called Pagans, other were called Chriſtians, taking their nam- upon the difference of the places where they elt. But from theſe Pages, (as I have ſaid) came the uſe and practice of Tythes in the Chriſtian rld, inſomuch as after when any Law was made, concerning Tythes, they held them evermore a Parochian right onely, and in no ſort at the poſition of the Biſhop, but in ſuch caſes as before hearſed; inſomuch, that if a Biſhop challenged Church in his Dioceſſe, he challenged it not in reſpect

Hoſpinian De origne Monochatus

C. Cùm contingat de Decim. verb. de jure coi. in gloſſ.

respect of any fee simple hee had in it, but in regard of the Spirituall Jurisdiction he had over it. And therefore the Authors of this opinion were farre out of the way, when as they thought the Bishop had like right in the Tythes of a Church of Patronage, to give and bestow them as hee list, as hee hath in his demeanes, and other his Temporal Lands, either to lease them out, or divide them into Tenancies, as him best liketh.

Ab. ca. nuper de Decim. & cap. deputati de Perdicis num. 16.

Neither is that case cleere or without question whereby they pretend a Bishop being seised of a Manor, may prescribe the Tythes of the demeanes thereof, by an immemoriall prescription against him and his Tenants, and Farmers for yeares and Tenants at will, to be exonerated, acquitted and priviledged from all Tythes growing thereupon: which if it be against an other person then himselfe, may hap to bee true, although perhaps also that be questionable, for that it is not long since Lay-people were capable of that right: neither could themselves by Law of the Church at any time grant such Spirituall Rights as these are to a Lay-men, either in *Feudum*, or *Emphiteusim* without danger of Excommunication, or deposition of their owne place, as hath beene before shewed. But if himselfe, or his predecessours were Parsons there, either in the right of their Bishoprick, as hath beene of late before remembred, or that the Benefice was annexed unto their See, for the provision of their Table, as many Bishops have had some one or more Benefices appropriate unto them to this purpose, then could they not prescribe

Ab. cap. ad hoc De Decimis num. 4.

ribe the Tythes in ſuch ſort as is pretended: For, eit no preſcription proceeds without poſſeſsion, no man can preſcribe againſt himſelfe, although be in poſſeſſion; for that evermore there muſt two perſons in a preſcription, the one which h preſcribe, the other againſt whom it is pre-bed; and therefore in theſe caſes it is never ſaid, y hold their Tythes by preſcription, but in the t of their Church, or Parſonage. In either of ich caſes, if they were Lords of the Mannor, Parſons of the Parſonage together, it is not to thought they would ſo reſpect the good of ir Farmer, as that they would either hurt their rch, or prejudice their owne Table, for their mers ſake: which they muſt doe, if they ſuffer a ſcription to runne againſt the Church, or them-es to exempt the demeanes of the Mannor from ment of Tythes, which were due both to the rch, and themſelves: For they were men, that h knew in their conſcience, how much they e bound unto the Church in this behalfe: and y were not ignorant what prejudice they ſhould unto themſelves, if by preſcription they ſhould ld to exempt ſo neceſſarie a proviſion for the ntenance of their Hoſpitality, as the Tythes of demeane of a whole Mannor, and their tenen-are: for no ſmall part of their commendation d in thoſe dayes in their hoſpitality, and refore it is not to be preſumed, that they would y cut off any proviſion that was fit for the . Beſides, if by either of theſe two wayes, the hop was Parſon of the place, then did the fruites

fruites of the Benefice, during every Vacation of t
Biſhoprick, not come to the King, (as they no
doe, whereby the Parſonage and Mannor are bo
conſolidated into one, for that they are now bo
holden to be Temporalties) but the Parſona
came to the Archbiſhops of the Province, a
ſpiritualtie granted to his See by priviledge, du
the vacancie of the Sees of ſuch Biſhops as were
his Province, as may appeare by the Lord Archb
ſhops Records of *Canterbury*; ſo that it cannot b
thought any preſcription could runne in th
times, being ſo often inrerrupted by vacancies
they were. Which being well conſidered, the co
cluſion is very doubtfull, whether ever any pr
ſcription ran in this caſe, neither would it ea
bee believed by thoſe that know the courſe o
Antiquity, but that there hath a judgement paſſ
in this part; and therefore will I ſtay my ſelfe he
and proſecute this point no further.

Ex Regiſtro Archiepiſcopi Cant.

SECT. 2.

That Tythes of Minerals are due.

I Intended to ſay nothing in this Treatiſe of th
Tythes of Minerals, and other ſubterranean
bodies, becauſe I know by Law, they are hold
by the like right, as the Tythes of thoſe things a
which grow in the upper face of the earth; b
yet becauſe I ſee there is a queſtion made of the
by ſome that will make every thing controverſab
that is due unto the Church, I will ſatisfy al
the

r curioſity: And therefore, for Mettals, and
er ſubſtances which are digged out of the bow-
of the Earth, and therefore are called *Foſſilia*:
is certaine, that what God worketh here in
ſuperficies of the Earth, for thoſe things that
g out of the earth, by the heat of the Sunne,
temperature of the Aire, and the influence of
Celeſtiall Bodies; the ſame he effecteth below
e depth of the Earth, for the generation of
tals, and other ſubterraneous bodies, by the
and cold of the Earth, that is included in the
ds thereof: For by the heat, hee raiſeth up
ours and exhalations in the matrix thereof, as
matter of thoſe ſubterraneous bodies: but by
cold, he drieth, thickneth, hardneth, and in-
teth the ſame into a Mettall, or Minerall,
reby hee giveth, as it were, a forme unto it.
as the diſpoſition of every exhalation ſo com-
ted and drawne together is finer or groſſer,
ter or colder, ſo is the Mettall or Minerall, or
er ſubterraneous body, more noble or more
yea, ſometimes by reaſon of this diverſitie of
lations and vapours, drawne together at one
, are divers conditions of Mettals there con-
ded together, whereof ſome are noble, as
, Silver, and Copper; ſome other are of leſſe
ate, as Tin, Lead, and ſuch like. Neither doe
grow onely in the beginning, but they renew
e when they are digged up, (as Trees and
s in the upper face of the Earth doe riſe out
e rootes and ſtemmes of thoſe trees which
have

Eraſtus tractat. de ortu Metallorum.

have been cut downe) if the place of their ne
generation be prepared accordingly: For where
as the place of their generation is farre below
the Earth, Nature, of a certain modesty in h
selfe, will not yeeld to the generation of these su
terraneous bodies, but in secret places, far remo
from the sight of the Sun, and the privity of oth
Meteoricall bodies, which are under the firmame
And by that meanes it hapneth, that these Miner
bodies are rarely known and perceived to ren
againe; for that being once exposed to the light
the Sunne, they are seldome or never closed up
gaine, by reason of the greatnesse of the gulfe t
is made in opening of them. But yet the nature
them is such, that if their bed were thereto pre
red accordingly, they would conceive an
which is a thing so notorious in Quarries of ston
which are lesse abashed at the sight of the Sun
and the presence of other Meteoricall bodies
their generation, that the Law it selfe, and o
good Authors have set it downe for an undoub
experience, that being digged up, they do re
againe, by the nature and disposition of the mo
wherein they are ingendred: For some Earths
as naturally yeeld stones, and other minerals
of them, as others bring forth Corne, Hay, and
ther fruits: which if it be true in those bod
which are in the upper crust of the Earth, w
not also in those bodies which are found and
med below in the Matrix thereof? And if th
bodies doe both ingender and renew, which
conceived so farre below in the Navell of th
Earth

ff. Soluto Matrimonio l. fructus eos. §. 13. Plin. l. 36. c. 15. & 18. de naturali Hist.

Strabo lib. 5.

th, why is not Tythe due of them, as well as of other fruits that are in the ſummities or ght of the Earth? Whether is it, that Gods d leſſe laboureth in the procreation of theſe rreneous bodies, than it doth in the ripening quickning of that fruit, that ſprings out of the r face of the Earth? But that is farre other- wiſe, for here in theſe upper fruits, one plant- an other watereth, and God only gives the eaſe: But in the other Minerall bodies, God doth all, for he only is the planter, he is the rer, and he gives the increaſe alone. Or is it God hath leſſe delight to be honoured with hid treaſures of the Earth, than he hath to orſhipped with the labour of the plow, or the eaſe of the cattell of the field? But, that this t ſo, it is Plaine by the glorious Temple that *mon* made, which had not only Cedar trees the roofe thereof, and Algummin wood for ornaments thereof, but alſo had quarrie ſtone the walls thereof, and gold of *Paruaim* for the tifying of it, and for the overlaying of it with- And of all other kind of Mettals, Gold is firſt mbred in the Scripture, immediately after the tion of the World, ſo that God himſelfe may to have a ſpeciall regard of this Mettall above e reſt, for that this alone above all the reſt, by fying is not diminiſhed. Or is it that God h his Miniſters leſſe than other men, ſo that would have the Laity to have all the precious s of the Earth, and his Miniſters to have no of any other thing, but that which is vulgar and

2. *Chron.* cap 2.

Geneſ. 2. *verſ.* 11. & 12.

and common? But how unlike that is, who se
not, when hee seeth that God hath committed un
to them, the inestimable treasures of his word;
comparison whereof, both these upper fruits of th
earth, and those hid treasures below, are meere
drosse and corruption? and therefore it is not lik
when he hath committed unto them those grea
matters, hee would deny unto them these sma
blessings. Or is it, that there hath beene p
Tythes of the upper fruit of the earth already, an
therefore connot Tythe be twice demanded of o
ground in one yeare, according to a new ow
ruled doctrin? But that opinion is both contra
to Law many hundred yeares obtained in
Church without contradiction, whereby it is or
dained, that as often as the earth fructifieth in o
yeare, so often shall Tythes in the same yeare be
paid of it: and also it is contrary to Divinitie a
reason, that it should bee otherwise. For when
God hath given thee more Harvest or more Vi
tages in one yeare, is it not both godly and reaso
able, as God hath increased his blessings towar
thee, so thou also shouldest rise in thankfulnesse to
wards him? For, where every one hath receiv
more grace or more favour, there ought he to b
more thankfull, lest God for lack of this corre
pondencie in thankfulnesse, bring thy nine par
for thine ingratitude towards him, to a ten
onely. For certainely so hee is able to doe, by send
ing deluge and drought upon the earth, by bring
ing barrennesse upon it, by destroying that whi
is sprung out of the earth already, by storme an
tempe

Ca. ex parte de Decimis, & ibi Al. 18.

mpeſt, by the Graſhopper and the Caterpiller: r all this hath hee threatned to all thoſe that are nthankfull this way, neither is the Lords hand more ſhortned now than it was then. Whereas notwithſtanding to the contrary, hee hath promiſed reat kindneſſe unto ſuch as ſhall pay their Tythes ely and cheerfully, as that hee will open the indowes of heaven, and powre out his bleſſings thout meaſure upon them. *Hilarem enim datorem amat Deus.* Beſides this, the earth that bringh out mettals in the matrix of the earth, is not t bringeth out corne and graſſe in the top of e earth: for that earth that is the mother of metls, being preſt downe farre into the bowels of e earth, can yeeld no ſuſtenance, to thoſe fruits t grow ſo many fathoms above it, to which it nferres nothing ſave that it doth ſupport and re up that other earth, which nouriſheth the nts and fruits of the upper earth, whoſe ſuſtence is not fetch't deep out of the earth, but is t out of that earth which is within one cubit, two of the top of the earth: which may eaſily perceived by thoſe fruits and trees that grow hard rockes neere to the top of the earth, oſe food, although it be neerre unto the top of earth yet do they flouriſh, and ſtand faſt, as er trees and fruits doe, which have more fat deepe mould under them. And therefore cant the Tything of thoſe things which are above, uſe the Tytheing of the treaſures that are ow, albeit the concluſion were true, that two gs are not to be paid out of one grownd in one

yeare, for theſe are not one ground, and the concluſion it ſelfe is erroneous, and therefore I conclude this point thus: Since Mettals and minerals, and other ſubterraneous bodies are in no leſſe Obligation to God, then other fruits of the earth are, there muſt be no leſſe Tythes paid of them, then are of other fruits of the earth: for that theſe are the inward fruits of the earth, as well as thoſe are the outward, and therefore of like things, there muſt be like judgement and like conſequence. And thus much as concerning the Tythes of Mettals and Mineralas.

SECT. 3.

That Tythes of Turves be due.

AND now becauſe I am in this matter of Tythes, I will ſhape an anſwer to one doubt that is made, as concerning the Tythes of Turves, that is, of earth diſpoſed, and prepared for fewell, which are ſaid not to be Tytheable, and that upon this reaſon: That Tythes are not paid of the earth it ſelfe, but of thoſe things which ſpring out of the earth: which opinion is true, if it be underſtood of earth not ſeparated from the body, and maſſe of the reſt of the earth. For if Tythes ſhould be yearely paid thereof, as it is paid of other things that grow out of the earth, all the whole earth in a ſhort time would become the Clergies. But if it be meant of earth that is ſevered from the reſt of the maſſe, and globe of the earth, then is it other-

wiſe

wiſe. For that earth that is thus ſevered from the other earth, is no more part of that earth from whence it is ſevered, then a mans hand, or leg being ſever'd from the dody, is part of his body after it is cut off from it. And therefore of this earth ſo provided for fewell, may Tythes as well be paid, as of any other fewell of wood, cole, or otherwiſe that is provided to be burnt. For there is one reaſon of things, when they are united together in one body, and another of thoſe things, when they are divided from the ſame bodie: for ſo long as they are in one and the ſelfe ſame body, they follow the nature of the whole, but when they are divided, then is there another conſideration of them. *Separatarum enim ſeperata eſt ratio, & ex ſeperatis non infertur de uno ad aliud.* Corne, Graſſe, and ſuch like, while they ſtand, are not Tytheable, although the Tythe then is in them *pro indiviſo*: For while that they ſtand, they are part of the earth upon which they ſtand, and therefore ſo long untytable, becauſe the earth it ſelfe is untytheable. But if they be cut downe, then are they to be Tythed, becauſe they are now no longer parts of the earth, but bodies by themſelves ſeparated from the earth, ſo that now the not tything of them is penall: Of which ſort are turves ſeperated from the reſt of the maſſe of the earth. Neither is this my opinion alone, but it was *Linwoods* long agoe, and other Eccleſiaſticall writers, who not onely make Turfe Tytheable, when it is prepared for fire, but alſo great rods, and ſmall twigges, ſtickes, and chips of timber, buts, and roots of trees, thornes, bryers, walnut

L. finali. ff. be calumniatoribus.

Provincia de decim. c. ſanctæ, & ibi Linwood verbo turb arum.

L. *Ligni appellatione* § 4. 5. *&* 6. *ff. de legat.* 3.

walnut ſhels, and nut ſhels, weeds, coles, and cole-brands (called *Titiones*, becauſe they are ſo burnt as they ſhall not make a ſmoake) cowſhards, which the Law calls *Editus boum*. All which a man can uſe to no other purpoſe than to burne: for where wood lackes, theſe ſucceed in place of wood, and are called by the name of wood, and are in like obligation, as concerning the Tythe due thereout, as wood it ſelfe is; *Vbicunq; enim eſt eadem ratio, vel eadem æquitas, ibi debet eſſe eadē juris diſpoſitio.* And therefore not in that, that Turves ſometimes were gremiall earth, they are to bee diſcharged of Tythe: but in that they are accounted for Fewell by the law, when they are ſo prepered to be burnt, they are to pay Tythes in like ſort, as other things applyed to that uſe do.

L. *Illud. ff ad legem Aquilian*

SECT. 4.

That the cogniſance of barren heath, and waſte grounds belongeth to the Eccleſiaſticall Courts, and what every of them are.

And ſo farre as concerning the Prohibitions which ariſe out of this proviſo. Now it ſolloweth that I ſpeake ſomething of the next proviſo, which is concerning the Tythes of barren heath, and waſte ground, and the Prohibitions thereupon.

2. *Ed.* 6. *c.* 13.

This proviſo hath two branches, the one for comparitive barren heath, and waſte ground, the other for abſolute barren heath, and waſte,

for

either of which is aſſigned a time of ſeven yeares, either for the paiment of ſuch Tythes, as before the time of their improvement, and converting to arable, they were charged with, or for the free and abſolute diſcharge of them from all manner of Tythes for ſeaven whole yeares next after their improvement ended and determined. For ſo I take the Statute meant, when as it made the one Tythe-able, the other not, for if other wiſe they had beene both in one predicament of the barrenneſſe, the Statute had not made the one free from Tythe for ſo many yeares as it doth, and charged the other all that time with Tythe.

For theſe two kindes of grounds, although the Statute ſay nothing, which is comparative barren, which is abſolute, yet reaſon telleth us, that is comparative that hath a poſitive under it, and a ſuparlative above it: And there-fore that is comparative waſte, barren, or heath, in reſpect whereof there is ſome over ground more or leſſe waſte, heath, or barren, ſo that it hath ſimply and poſitively in it ſome con-dition of heath, waſte, or barren: but if it hath nothing of any of theſe qualities in it, then is it, either heath, barren or waſte, howſoever long otherwiſe it hath lien unmanured, and not turned to tillage: For it is not the turning of a ground to tillage that makes it heath, barren, or waſte, but it is the ill diſpoſition of the ground it ſelfe, ſubject to theſe inconveniences, that cauſeth it not to be turned to tillage; for no man will willingly till that, where the gaine of the tillage will not quit

the

the cost and labour of husbandrie, as for the most part it falleth out these grounds that they doe not.

Glos. L. licet. C. de locato & conducto verbo sterilitates

Barren ground therefore simply, is that which being eared, yeildeth not the seede againe, or at the most, yeildeth so small advantage for the tillage, as that the tenant after that he hath paid his rent, hath not the worth of halfe his seed againe; much like unto that ground whereof the Scripture speaketh, whose barrennesse is such, as being eared, and sowed, neither the Mower filleth his hand, neither the Gleaner his lap with the yeild thereof. These grounds are not only called *Sterilia* of the Latines, but also *Infæcunda*, *Infrugifera*, & *sine prole*, for the excessive barrennesse that is in them: and the Greeks upon like occasion terme such conditioned grounds, ἄγονα, ἄκαρπα, στεῖρα, ἔρημα, καὶ ἄφορα, in which sence, mony not put to usury is by the Law called barren mony, and *Aristotle* calleth it fruitlesse mony: for that mony was not devised thereby to increase mony, as greedy usurers in all ages have done, but that by the means thereof men might ease the difficulties, and necessities of change of one kind of thing for another, as a horse for an Oxe, sheep for a Goat, Iron for brasse, and such like: for there is nothing that may not be esteemed by mony, and the use of mony, is the uttering of mony, whereby it is commonly said, Mony is lost by the use thereof, not that mony doth perish or decay by use, for we see the clean contrary to that, for though mony goe thorough a thousand mens hands, yet it is still of the same value, and

L. si quis usuras. ff. de eo qui pro tutore.

Arist. 1. l. politicorum.

Arist. 4. Eihicorum. c. 1.

d remaineth in her proper eſſence or being: but
at the uſe of mony is in the laying of it out, and
hat by the uſe thereof, mony paſſeth from him
hoſe it was, and the propriety thereof goeth to
nother, and therefore as to the firſt owner it is
ent, and loſt: without which looſing, mony na-
rally gaineth nothing; for lay it up in a coffer
cheſt never ſo long, it will never be the more
number, although perhaps as S. *James* ſaith,
will gather a ruſt and canker, and that ruſt Iam. cap.
canker, will be a witneſſe againſt them 5.7.1.
hich ſo hoord it up from the ſervice of God, and the
ommon-wealth, in the day of the Lord: So then,
that mony is barren, that lyeth ſtill, and bring-
h out nothing, ſo is that ground barren, that
ing tilled, yeildeth no fruit, or at the moſt, ſo
tle as the gaines will not recompence the
harge.

Although heath ground, and barren ground be
moſt Synonomies, yet to ſpeak properly, heath
as it were an effect of barrenneſſe, for that there
no ground that bringeth forth heath, but for
e moſt part it is barren. And therefore as heath
ſelie is an unfruitfull kind of ſhrubs, and is good
moſt for nothing but for the fire; for that nei-
her growing or cut downe, it hath any benefici-
l uſe at all for the Common-wealth: ſo alſo the
ground it ſpringeth out of, hath neither faireneſſe
to the eye, nor goodneſſe to the yeild, but is com-
monly either a black ſower ground, that hath no
ſweetneſſe at all in it, or is a drie hungry ſoyle,

such as evermore cryeth give, give, and never re-
storeth ought againe.

Proverb. 12 Waste is that which for the unfruitfulnes
thereof hath layen time out of mind unmanured
in which sence it is all one with barren ground
or it is such ground as for the charge of hedging
ditching, fencing, and tilling no man will manure.

our fore-fathers anciently comprised all the
three under one name, calling them all by the
name of *Novalia*, that is, new-br^ken-up-ground
not onely because they were not broken up in the
memorie of man before, but also, for that being
eared, they yeelded little or no fruit at all: and
therefore the interpreters of the Law defining what
Novalia are, say, that they are such grounds as be-
fore the tillage thereof were *inutilia*; & example
them out, in Mountaines, Marshes, Thickets, and
such other unprofitable ground, as out of
which before the stocking of them up, and convert-
ing them to tillage, the Church tooke little or no
benefit at all. And those are the same or colen
German to those which this Statute calleth heath
barren and waste, for they are one and the very
selfe same with them, in all the chiefe points, for
which they are excepted out of the Statute.

C. commissum de decimis; verbo inutilia.

So then now, there is no further question what
is heath, barren, and waste ground, but who shall
trie the matter of this quality; whether the
Ecclesiasticall Judge, in whose continuall possession
this triall hath beene untill now of late, that under
colour of this Statute, it hath bin incroched upon
as it may appeare by all the Titles of the Ecclesiasti-
call

all Law, where there is any mention of the Tythes of new broken up ground, and the decrees of the Law givers in the ſame, betweene the Monaſteries challenging them by graunt, and the Parochian Miniſters of the Pariſhes where they grew, claiming the ſame by right: Or the Temporall Judges whoſe is the Cogniſance of the Tytle, and Tenure of the ground, as alſo is the ſetting, letting, buying, ſelling, and other alienating of the ſame.

For the point it ſelfe, the Statute maketh no mention but paſſeth it over with ſilence; and therefore it is to be preſumed that it meant, that it ſhould there reſt, where it was before the making of the Statute: for the Statute was not made in derogation of the Eccleſiaſticall proceedings, that were before; but in affirmance thereof, as the whole drift of the ſaid Statute doth ſhew.

And if the Statute had meant otherwiſe, it would ſurely have expreſſed it either in the proviſo it ſelf, or after in the derogatory clauſe; where it maketh an enumeration of ſuch things as it intended ſhould be exempted from the tryall of the Eccleſiaſticall Law, and by vertue of this Statute, ſhould not be compriſed under the ſame, among which there is no word of this proviſo, or any other in the ſame Statute before named.

Neither is it unto the purpoſe, that the Common Law of this Land taketh knowledge of the Tenure and Title of Lands, and ſuch other complements belonging to the ſame; for theſe things that are here in queſtion, are no part of thoſe Legall Eſſences, which the Law requireth to the

Tytle

Tytle and Tenure thereof, as is Fee-ſimple, Fe
taile, and other of like nature, according to t
learning of that Law, but theſe are certai
accidents over and beſide the Tenure of the La
which may be preſent or abſent without the i
jurie of the Tytle: as God many times turn
flouds into wilderneſſe, and ſprings of water agai
into drineſſe, and a fruitfull Land makes hee barr
for the wickedneſſe of them that dwell therein,
yet the Tytle or Tenure of the ground is n
changed, by theſe changes of qualities, but remai
the ſelfe ſame that it was: ſo that theſe things
no more ſubiect to the ordering of the Comm
Law, to judge and determine what mould is wh
and what is blacke; what ground will bear whe
what barley, what oats; for theſe things are
matters of skill of Law, that they need to be fet
out of bookes, but they are matters of comm
experience which every country man can as w
skill of, as the greateſt Lawyer that is, and th
fore the Law in this caſe is not deſirous of a
curious proofe, but contenteth it ſelfe onely wi
the depoſitions of two or three honeſt men, whi
ſpeake ſenſibly and feelingly to the point that is
hand, which is enough to direct any wiſe Judge
his ſentence, ſo that it needs not theſe long ci
cumſtances of twelve men to teach the Judge wh
and how truly the witneſſes have depoſed, for
every qualitie of the ground reſteth in mouth
twelve men onely, then ſhould no man be able
ſay out of the mouth of a witneſſe, and pronou
thereupon, this ground is mountaine, this is plai

is medowe, this is arrable, unleſſe hee were ranted by the verdit of twelve men thereunto: ich if it be an abſurditie to hold, then ſure it is e abſurditie to ſay, that barren, & heath, le cannot be pronounced without a Jurie, for theſe things are like abvious to ſenſe, and of qualitie as the others are.

And I pray you, when they have drawne it unto ir tryall, what do they in effect otherwiſe then Eccleſiaſticall Judge would or ſhould have e, if it had remained ſtill under him? for do give credit ſimply to the conceit of the Jurie, ouching that which hath beene decla- red, and ded in the cauſe before them, or do not the ges themſelves rather make a brieſe of all that beene pleaded in the cauſe before them, and reof make as it were a verdit, and put the ſame he mouth of the twelve for their verdit, before goe from the barr? So that the whole weight e cauſe ſtandeth rather in the Judges directi- in ſuch ſort as it is at the Eccleſiaſticall Law, it doth in the mouth of the Jurie; for the ie men for the moſt part, are ſimple people, and ce four of the twelve underſtand their evidence: hat it may ſeeme rather to be a matter of rfluitie then of good policie, to referre a matter their verdit, when as they ſay no other thing, what the Judge taught them before; *Stultum enim id facere per plura, quod fieri poteſt per pau-a*: for albeit perhaps ſome capricious fellow of Jurie, upon the confidence of his owne braine, metimes ſtart aſide from that which the Judge hath

hath told him, and draw the reſt of his fellow as ſo many ſheepe after him; yet for the moſt p the Judges voice is their direction, their loadſto and the North pole to guide them in this buſine

Beſides in this proviſo, as in ſome other pre dent, there is a great diſadvantage offered to Clergy, which they much complaine of, and th is, that in caſes of this nature, they are compell to ſuffer triall under them, who are in a man parties unto the ſuit, by reaſon of the inter they have therin, either in preſent, or in con quence; ſo that many now adayes (learning t late by other mens harmes what the event in th owne cauſe will be) chuſe rather to loſe their rig than to venture their cauſe upon ſuch parti Judges, as the twelve men are.

SECT. 5.

That the Boughes of great Trees are tytheable, and alſo are the bodies, but in the caſe of the Stat onely.

AND ſo far as concerning thoſe prohibitio which are forced out of this Statute, for n turally they grow not out thereof: ſo that I mig now paſſe over to the other branch of my diviſi that is, of ſuch matters as are now held by t Common Lawyers, to bee in a certaine meaſ onely of the Eccleſiaſticall proceeding, but wo acciently wholly of the Eccleſiaſticall cogniſan but that the name of the Statute, *De Sylua cæd* offeri

ring it ſelfe unto mee in the concluſion of this tute of *Edward* the ſixth, gives mee occaſion to ke ſomthing thereof, before I come to the

This Statute, as the words thereof doe ſhew, made in behalfe of the Laitie againſt the Cler- for the exemption of great Woods of twenty res growth and up ward, from the payment of thes; and that in three caſes onely, where the od was great, when it was xx. yeares of age and ward, where it was ſold to Merchants, either to profit of the owner himſelfe, or in ayde of the g in his warres; ſo that without theſe caſes, it eth the Statute intended no further exemp- for Statutes are things of ſtrict Law, aud are, further to bee extended, than the words there- give matter thereunto, eſpecially when the thing lfe naturally was liable to ordinary courſe of Law, as other things of like nature are, and the ute comes in derogation of their ordinary rſe: as in this caſe, great timber anciently was leſſe tytheable than ſmall trees are, and ſo by ture ought to be, if the Statute were not to the trary; yet not withſtanding theſe limitations of ſame, if great wood bee cut downe to any o- r uſe than to ſale, as to build, or to burne a mans owne uſe, a prohibition in this caſe th, and yet there is no Identitie of reaſon to ex- d it, nor any abſurdity would follow, if it were extended; for here is neither money ſought, which gave occaſion unto the Law-givers to ke this Statute of exemption) neither is it an unnaturall

unnaturall thing, for to pay Tythes of great woo
for before this time they were paid, and by t
Law of God, it ſeemes, they ought to bee pai
for that he that is taught, ought to communica
to him that teacheth him in all things: and ther
fore ſince the reaſon that moved the Law-givers
order it ſo in one caſe, ceaſeth in the other, th
is no reaſon of exemption; and when there is n
an Identitie of reaſon in the things that are in d
mand, there can no ſound inference be brought
from the one to the other, for of ſeverall thing
there is a ſeverall reaſon, and a ſeverall conſeque
ce: neither can there bee framed thereof a goo
implication, either poſitively, or remotivel
neither hath this interpretation of theirs any wa
rant of Law for it, ſave that it hath beene ſo d
fined and decided: but what is that to the purpo
if it hath beene wreſted and wronged contrary
the true ſenſe of the Statute, and that by tho
that take benefit thereby, whoſe partiality bei
taken away, the thing it ſelfe would eaſily tur
againe to his owne nature, and right would tak
place?

The reaſon they yeild for the exemption o
great woods of the ages aforeſaid, although
themſelves it be plauſible, yet to others it is ſtrang
as namely, that great Trees are part of the Free
hold, and that men uſe not to pay Tythes of thei
free-hold, but of thoſe things which ſpring out o
their free-hold, as out of Corne, Graſſe, Fruit
and ſuch other; whereas indeed the talleſt Timbe
tree, that is, if it were as high as the higheſt Ced

Plowd. in Soby contra Molyns.

Lebanon, is no more part of the inheritance or
-hold, then the loweſt bramble that groweth
he field; for they are both equally part of the
und wherein they grow, and doe take alike
riſhment and ſuſtenance from the ſame; neither
they differ in that they are trees the one frō the
er, *ſecundùm magis & minus*, as the Logicians ſay;
in that, the one is a great teee, and the other
all ſhrub: and the cauſe of this proviſion here in
gland for theſe great trees, was not for that one
more of the inheritance then the other, but
that the one yeildeth more profite to the
mmonwealth then the other, and therefore they
e made the cutting downe of the one, more
ll then the other: as in like caſe by the Civile
, whoſoever privily cutteth down, or barketh
ine, an Olive, or a Fig-tree, or doth any other
wfull act, whereby any fruitfull tree, or any
mber tree doth periſh and decay, it is Theft; and
is puniſhed in the double value of the hurt which
done, and if he be Tenant to the ground which
h done this villany, he loſeth his hold: which
mmeth not of that, that one kinde of Tree hath
ore ſtate in the ground then an other hath, but
t the Law hath reſpected, the neceſſary uſe of
one more then the other.

ff. Arborum furtim cæſarum toto tit.

By the Civil Law, although this word, Wood, be
erall, yet it is thus diſtinguiſhed, that ſome is
ood, ſome is Timber, which the Law cals
ateria. Timber is that which is fit to build or
derprop withall: Wood is whatſoever is provid-
for fewell, ſo that under that name there paſſeth
Reed,

L. Ligni ? appellatione de Leg. 3. et L. Carbonum ff. de verb. ſignificat.

Reed, Cole, Turfe, Cow-dung, and whatſoeve
is any where ordinarily uſed for fewell. Timber
of a higher conſideration than wood is, inſomuc
as if a man bequeath unto an other all his woo
that is in grove-field, there ſhall not paſſe by th
legacie, ſuch Trees as are cut downe for Timbe
but if they were dotterd Trees, or the owne
thereof purpoſed them for fewell, and ſo cut the
out into billet, or fagot, in ſuch ſort, as there
could be no other uſe thereof than to burne, the
it is otherwiſe: for by this meanes, of great wood
it is become ſmall wood, as being cut out i
ſhides or ſplinters, fit for to burne, So that in th
reckoning of the Civile Law, Timber ſtands no
only in the nature of the wood it ſelfe, but is i
the deſtination and purpoſe of the owner, who ac-
cording to his good liking may make that wood
which is fit for Timber, fire-wood, or timber
which if it were ſo in account with the grea
Lawyers of this Land, the Church ſhould ha
more Tythes of Wood appointed for fewell, an
leſſe ſuit for the ſame.

L. Ligni appellatione, §. Oſilius, & §. idem ff. de legat. 3.

As they exempt the bodies of great Trees a
bove xx. years growth, from payment of Tythe
ſo alſo they free the boughs thereof, upon this rea
ſon, that the boughs thereof are fit and ſervicea
ble for building, which although happily may b
in ſome of them that are next to the Trunck of th
tree, yet it is farre otherwiſe in thoſe that ar
more remote from the ſame, whereof there can b
no other uſe, than to burne: and therefore th
Law preciſely holds, in caſe where wood is be
queathe

Plowd. ut ſupr.

eathed, by which is meant fire-wood only, un-
ſſe the Teſtator otherwiſe expreſſe his mind, the
ops of Timber trees, which the Law calls *Supera-*
nta materiarum are bequeathed, for that the
ops have not that uſe that the Timber hath, that
, to build or prop up withall, but they ſerve to
rne only: By which ſeverall ends, there is ſeve-
ll conſiderations and account made of them.
either is it to the purpoſe, that they alledge for
e defence hereof, that the acceſſorie followeth
e nature of the principall, for that rule is not
ue in every acceſſory, but only in ſuch, wherein
the like reaſon as in the principall, which in the
unck and lop of a tree cannot be alike for build-
g.

L. Ligni Appellat. §. Oſilius De Leg, & Fod. 3.

L. Eiſi. C. de Prædiis minorum.

Further, how the Boughs of a tree that are of
e ſame ſubſtance, as the body of the tree is,
ould be acceſſories to the tree, I ſee not, for no-
ing can be an acceſſory to another that is of the
e nature and ſubſtance as the other is; as the
gge, or hand, are no acceſſaries to the body, for
t the legge or hand are of the ſame ſubſtance
at the body is: The Child, neither while it is
the Mothers wombe, neither after it is borne,
an acceſſory to the Mother, for while it is in the
others wombe, it is part of the wombe, and af-
r it is ſevered from her wombe, it is a man or
oman like principall as her ſelfe is: But that
hich is an acceſſory to an other, muſt be of ano-
er nature than the principall is; ſo in naturall
ing creatures, haire, hooſes, hornes, and finnes,
d ſuch other like excrements, are acceſſories to

L. 1. ff. de ventre. inſpiciendo.

the creature whose they are, for that they are of a farre different nature from the bodies, out of which they come: and so in other naturall things not living, as the Earth it selfe is, the Trees, Grasse, and fruit that spring out of the same, are accessories thereto. Further, in Civile matters expences and executions are accessories to the causes out of which they rise: and in Marriages Dowries, and Joynters are accounted accessories to them, for that without Marriage, neither Joynter nor Dowrie can stand. Usury is said to be accessory to the principall, not in respect that the proper subject of either of them is mony, and that there is one substance or nature of them both; but inregard of the dependency the one hath of the other; for he that will make challenge to Usury must first prove there is a principall. But for the better clearing of these matters of accessory and principall, we must know that in bodies whose substance is all one, There are some parts like which the Philosophers call *partes similares*; some other unlike, being likewise called of them *partes dissimilares*, which in no sort are accessories one to another, but make one continued body of both which the Law calls ἀνωμέρον: Similar parts are such, as have one substance, forme and figure, as the trunke or body of a tree is all one in inward essence, and outward shape: Dissimilar parts are those, which have one inward nature with the other, but are divers in outward shew, as the boughs and rootes of the Tree are divers between themselves, and different from the body, and yet

L. dotis ff. de jure dotium.

agree in one ſubſtance, and have all the ge-
rall name of Wood, whereby they are diſchar-
d from being acceſſaries the one to the other, and
they are not under one capacity of ſervice, or
comprehenſion of Law, becauſe they are un-
one to the other; and of unlike things, there
nlike reaſon, and unlike conſequence.

Now upon theſe grounds to exempt Timber
ees wholly from the ſervice of him, that is Lord
well of the tall woods, as of the low ſhrubs, is
y hard, for though himſelfe dwells not in hou-
that are made with mans hand, nor hath any
d of tall Trees to repaire his Tabernacle, or
p up his dwelling: yet ſince he hath left ſuch
ind him, as have charge of his flock, and feed
m in word and work untill he come, and they
ell in earthly habitations, as other men doe,
their edifices and buildings have need of re-
e, in like ſort as other mortall mens houſes
e, being all in like manner ſubject to rottenneſſe
corruption; great reaſon it had been to have
wed him ſome proportion of theſe great
ods, towards his ſervants neceſſary uſes, during
time of their ſervice here, and if not in the ve-
tenth it ſelfe, yet in the xxx. xl. or L. part of
ſame, that God thereby might have been as
acknowledged to be the Lord of the great
kes of the Forreſt, and that by him they have
ir length, breadth, and thickneſſe, as he is ac-
pted and reputed to be Lord of the ſmall bram-
and buſhes of the field: for as now the caſe
ndeth, God may either ſeem to have forgot

himſelf, that he hath not made timber trees tythe-able, as he hath done other ſmaller woods, eſpecially having ſuch occaſion to uſe them, both in the Chancels of Churches that are dedicated to his uſes, and alſo in the buildings and repairings of his Miniſters houſes, who ſupply his roome in their ſeverall Congregations, untill he returne to judgement; or that may well be objected againſt us, in allowing ſuch things for Tythes as us pleaſe, and diſallowing the reſt, as was by that ancient Father of the Church *Tertullian*, objected againſt the Senate of *Rome*, who being intreated by the Emperour *Tiberius* (for the ſtrange wonders and miracles he heard to be wrought by our Saviour Jeſus Chriſt) that he might be entertained among the number of their Gods, refuſed ſo to doe, for that they heard our Saviour was a Jealous God, and did in no ſort admit the ſociety and fellowſhip of other Gods; which this grave Father hearing, (although many years after) ſaid merrily, although wiſely, That God ſhould be God, if man would let him.

And thus farre of thoſe caſes which are held to be abſolutely of the Eccleſiaſticall cogniſance, and yet notwithſtanding are eclipſed by interpoſition of ſundry contrary matters.

CHAP.

CHAP. VII.

SECT. 1.

What caſes Diffamatorie words belong to the Eccleſiaſticall, and what to the Common Law.

NOw as concerning thoſe things which have beene accounted but in a certain meaſure of Eccleſiaſticall cogniſance, & yet not withſtanding have anciently, in a manner, been tried wholly in the Eccleſiaſticall Courts, ſuch as are matters of diffamation, and matters of Baſtardie, both which now adays are much challenged by the Temporall Courts, to be of their cogniſance. But here firſt of diffamation, then of Baſtardie.

To diffame therefore is, as *Bartol* ſaith, to utter reproachfull ſpeeches of another, with an intent to raiſe up an ill fame of him; and therefore him-ſelfe expreſſeth the act it ſelfe in theſe words, *Diffamare, eſt in mala fama ponere.* *Bartol l. turpia ff. de legat. 3.*

Albeit Diffamations properly conſiſt in words; yet may they alſo be done by writing, as by Diffamatory Libels, & alſo by deeds, as by ſignes & geſtures of reproach; for theſe no leſſe ſhew the malicious minde of the Diffamer, than words do. *Linwood c. authoritate verb. quacunque de cauſa. in gloſ. de ſent. excom.*

Diffamatory words are uttered either in ſome ſcoffing or jeſting māner, ſo as facete & merry men uſe to doe, to make the company merry wherein they

they are; or they are ſpoken by ſome that have ſome weakeneſſe, or diſtemperature in their brain either by drink, phrenſie, or other lightneſſe, or by any raſhneſſe in their tongue: or they are poured out upon ſome rankor and malice, by ſome that envy another, with intent to diffame him, & ſpread abroad a matter of diſgrace upon him.

Ariſt. 4. Ethic. cap. antepenult. *Epheſ. 4.5.* If they be ſpoken in a jeſting manner to make the company merry, if it bee in a fine ſort delivered, it is by the Greeks called εὐτραπελία, and is by *Ariſtotle* held to be a vertue, although by S. Paul it is condemned as a vice; but if it bee in homely and groſſe ſort delivered, then is it accounted to be a kind of rudeneſſe or ruſticitie; but whether way ſo ever they be uttered, there is, for the moſt part, no advantage taken againſt them, unleſſe thereby there follow any diſcredit to the party upon whom ſuch jeſts are broken, for then are they not without blame, *Noxius enim ludus eſt in vitio*, neither can that bee called a jeſt or ſport, whereby a mans good name is hurt, or any crime impoſed upon him.

Extra de preſumpt. c. 1.

ff. ad l. Aquiliam, l. nam ludus.

The like may be ſaid of thoſe which ſpeak hardly of any by the lubricitie of their tongue, or weakneſſe of their braine, who for that they are not thought to ſpeake ſuch words maliciouſly, paſſe for the moſt part unpuniſhed, *Lubricum enim linguæ non facilè ad pœnam trahendum eſt*, no though a man in this caſe ſpeak ill of the Prince himſelfe: And the Civile Law is ſo farre from taking hold of ſuch words in theſe caſes, that the Emperour himſelfe hath ſaid of them thus: *Si id ex levitate proceſſe-*

ff. ad l. Iul. Majeſtatis l. famoſi.

ceſſerit, contemnendum eſt; ſi ex inſania, miſerati- dignissimum eſt. *C. Si quis Imperatori maledixerit*

But if the cauſe of ſuch words bee rankor or alice, then are they altogether to be puniſhed, that there can be no juſt excuſe made for em.

Such diffamatory words as proceed of malice, ply either matters of crime, or matters of defect. Such as imply matters of Crime, either are ſuch imes which it is expedient for the Common-alth to know, as Treaſon, Felonie, Murther, reſt, Adulterie, and ſuch like, to the end they y receive due puniſhment, whereby God may e pleaſed, and the Common-wealth ſatisfied: Or y are ſuch crimes or faults, which it is not ex-dient for the Common-wealth to be acquaint-with; as where one calleth one prodigall, or nd-thrift: For albeit it bee expedient for the mmon-wealth, that no man miſ-ſpend his eſtate, that the Common-wealth hath as it were an tereſt in every private Subjects ſtate, yet this is ther his owne hurt, than any other mans, and at which hee ſpends away unthriftily, com-only turnes to another better ſubjects gaine, hereby the Common-wealth is relieved in one, at it loſt in another; and for the moſt part there no great corruption of manners in the example thereof. *Bohic. cap. Siculpa de injuriis Linwood provinc. de ſent. excomm. cap. 1. verb, malio ioſe.* *Bohic. ubi ſupr.*

A great while it was before the Lawes of this Land tooke knowledge of Diffamations, as count-ing them things belonging to the Spirituall Law, ſo they were dulie proſecuted, as may appeare by

Term. 12. *Hen.* 7. *fol.* 22. *Regist. pag.* 49.

certaine Judgements aud consultations which have issued out thereon: but now let men prosecute them never so duely, yet Prohibitions goe out on them daily, & sundry others are drawn to the common Law Courts by action of the case; wherein they have so infranschised themselves, as that they take upon them to confine the Ecclesiasticall Law how farre it shall goe therein. Which limitation notwithstanding, as farre as I can conceive, are but distinctions without differences, and so are in very deed but bare *Synonomies*, that is, diverse names expressing one thing: for all the words in the said limitation inferre no more than this, that Ecclesiasticall men are not to deale in matters of Diffamation, but where the matter of Diffamation is onely Ecclesiasticall; and yet I reverence the Author thereof as a great man, and of like excellencie in this Law, as *Papinian* was in the other Law, and this I think to be commendation enough, for never any Lawyer in former age had more commendation, or eulogie of wit than himselfe had.

C. ad L. Iuliam. repetundarum. l. 1. *&* 2.

ff. de aqua plu. arcend. l. 1. *§. denique.*

In the first of these cases, if a man proceede by ordinary course of Law, either for the punishment or the sinne, as by presenting the offender to the Ordinary, or indicting him before the Temporall Judge, or by admonishing him by any charitable denunciation, with purpose to amend him, and to recall him from such offensive waies as hee is charged to walke in: Or do any thing in Judgement for the defence of his owne cause, as in objecting some thing against the partie himselfe, or his witnesses

neſſes, either for the elevating, or diſcrediting the truth of the cauſe, or the teſtimony of the neſſes; there can be no advantage taken againſt for he cannot be ſaid to defame, which uſeth libertie the Law gives him: albeit in this caſe e adviſe that a man ſhal object none of theſe ters againſt another in judgement, but when cauſe neceſſarily requires ſuch things to be ken for the defence thereof, and that the partie t objecteth them doth proteſt he doth it not h a calumnious minde, but that the defence of cauſe otherwiſe would not be juſtified.

L. Proculus & l. fluminum in fin. ff. de damno infecto. ff. de regul. juris. l. factum †. non videtur

But if any man doe any of theſe things malitiſly, with purpoſe rather to utter his owne kred ſtomacke, than that hee would benefit the ommon wealth thereby, then is hee puniſhable: although it be behoofefull for the Common alth that bad mens faults ſhould be manifeſted, t ſo wickedneſſe may be puniſhed, yet is it not they ſhoold be uttered in reproach and choller.

L. Labeo de ſupell. legat. C. de famoſis libel. l. 1. ff. ad. l. Aquileam l. ſi ita vulneratus

Of the ſecond ſort, although theſe be ſome that otaine pettie crimes, yet are they many times ſo rolous, as that they yeeld no action: for fri vos and ſmall things the Law regardeth not.

For ſuch Diffamations as ariſe upon defects, if e defects be ſuch that the the contagion thereof to be feared, unleſſe the people be forewarned of e danger that may enſue thereon, as in caſes of eproſie, the Plague, the French Pox, and other e infectious diſeaſes, and that it be revealed ith a ſincere minde, rather to cauſe men to refrain their companie for feare of the in fection, than

of

of any malicious humors againſt the partie, there by to reproach him, it is no Diffamation. But if be uttered in any ſpleene or choller againſt the partie defective, then is it actionable; for it is uncivile part to lay open another mans defects: but if the defects be ſuch, as it nothing availeth the Common wealth they ſhould be knowne; as when a man objecteth againſt another any imperfection of his minde, or deformitie of his body, which he had from his cradle, or hath happened to him by any accident without any default of his, and can not be eaſily remedied; or reprocheth him with any thing in his ſtate or condition, wherewith he is not juſtly to be charged, neither is there any juſt cauſe offered the diffamer why hee ſhould uſe ſuch diſgracefull ſpeeches againſt the other, then is he altogether puniſhable: For that ſuch things tend onely to contumelie and deſpite, which the Law ſeeketh by all meanes to repreſſe, for that thereby charitie betweene man and man is violated, and the peace of the Common-wealth is many times broken and diſturbed.

C. quando & quib. quarta parsl. 2. lib. 10.

The proceeding in theſe cauſes in the Civile Law was of two ſorts: for it was either *ad publicam vindictam*, or elſe, *ad privatum intereſſe*, as the partie injuried made his choice thereof.

Ad Publicam vindictam, was when the partie Diffamed, ſought, to have the Diffamer recant his words, or to undergoe ſome open and infamous puniſhment for his raſh and malicious ſpeeches whereby it might be publikely knowne abroad that he did the other wrong.

ff. ad L. Corneliam l. in conſtitutionibus. §. ult.

But

But *Ad privatum intereſſe*, was when hee ſought the recalling of the ſlaunderous ſpeeches which e given out againſt him, but eſteemed his credit ſome great rate (as that hee would not for a uſand pounds; or more or leſſe quantitie according as the worth and calling of the perſon is, e had ſuch ſpeeches gone out of him) and ſo es to have his credit ſalved by recompence in ney, as the Judge or Jurie, upon proofe of his rth and place, ſhall eſteeme it, and taxe it. In ſe actions, hee that ſued *ad publicam vindictam*, had followed ſo farre, as that he had brought o a Recantation or a publike diſgrace, could have recompence of his credit by money, ſave ly in caſe of commutation: neither hee that got his credit velued by money, could have a lique diſgrace alſo inflicted for his ſatisfaction, what way hee had choſen, with that he muſt e reſted contented, for that ireſull mens wraths erwiſe would never have beene ſatisfied, and the ſecution of theſe actions otherwiſe would be nfounded.

ff. de verborum obligation. Iſtipulationum §. planè ff de re judicat. L. ſi quis ab alio.

Theſe two kindes of proceedings the Princes Sages of former ages ſeeme to have ſorted to two kindes of Juriſdiction that are amongſt the one Spirituall, the other Temporall: and erefore the Law of the Land it ſelſe ſaith, in a ſe of Diffamation, when money is not demand- but a thing done for puniſhment of ſinne, which all one, as when the Civilians ſay, when it is ne *ad publilicam vindictam*, it ſhall be tryed in e Spirituall Courts: whereupon by argument of

contra-

countrary ſenſe it followeth, that where the puniſh-
ment of ſinne is not required, but amends in mone
is demanded, there it is to be tryed in the Tempor
all Court, for the Law would that every m
ſhould have his remedie agreeable to reaſon
what ſort him beſt liketh. And therefore be
fault what it may be, that the words of t
Diffamation do ſound unto, as long as it ſtands b
in words, and the partie doth not take upon him
juſtifie the matter that is compriſed under th
words, and doth ſeeke but for the puniſhment
the ſlanderous words onely, ſo long it is to
tried at the Spirituall Law; for the Law ſpeak
in generall in caſes of Diffamation, where puni
ment of ſinne onely is required: ſo that where
man is called Traitor, Felon, or murtherer, or
other crime belonging unto the Common-Law, b
ing every one of them words of great diffamatio
ſo the partie therein ſeeke puniſhment onely,
not his private intereſt, there the Spirituall Law
to hold plea thereof. For where the Law doth n
diſtinguiſh, there neither ought wee to diſtinguiſ
but the Law hath ſaid in generall, that cauſe
Diffamation, whoſe proſecution is thus qualifie
do belong unto the tryall of the Spirituall La
and therefore even thoſe caſes before remembr
where the partie followeth this kinde of proſecu
ons, ought by that Law to belong unto the Spiri
all Court, as on the contrarie ſide, Spirituall cauſ
of Diffamation being propounded to a pecuniar
end ought to be ordered in a Temporall Court,

But where any man takes upon him to juſtifi
th

e crime that hee hath objected, there either
ourt is to hold plea of the crime that properly
longeth to that Court, for that now words are
longer in queſtion, but matter is in tryall, whe-
r the partie diffamed hath indeed committed
t offence that he is charged withall or no;
ich can be tryed in no other Court, than in that
which it doth properly appertaine. And that
was the courſe anciently held in matters of
ffamation betweene the Eccleſiaſtiacll and Com-
n Law, it is manifeſt by the Statute of 2. of *Ed-*
d the 3. chapter 11. where altough the Statute
eth the perverſe dealing of ſuch, who when
y had been indicted before the Sheriſes in their
turne, and after delivered by Inqueſt before the
ſtice of the Aſſiſe, did ſue the indictors in the
irituall Court, ſurmiſing againſt them that they
diffamed them, and therefore in that caſe for-
the like ſuits; for that juſtice thereby was
dered, and many people were feared to indict
ffenders: yet that Statute plainly ſheweth that in
other caſes of Diffamation riſing out of Tem-
rall crimes beſide this, the Eccleſiaſticall Law
the cogniſance: and that this was forbidden,
was not for that words of this nature, could not
censured at the Eccleſiaſticall Law, when
niſhment of ſin onely is required, but for that it
s not fit that thoſe things, which had beene once
dered in one Court, ſhould be called againe to
amination in another: and therefore the generall
roceeding in matters of Diffamation, is not there
ohibited, but the particular croſſing of matters

after

after judgement is there reprehended.

So that the diſtinction whereof I formerly ſpak which taketh upon it to determine when a caſe Diffamation is of the Temporall cogniſance, a when of the Eccleſiaſticall, cannot here take pla for that it is contrary to the former Statute Decree that divided theſe caſes in to Temporall Eccleſiaſticall cogniſance by the varietie of t proſecution thereof, and that it is contrarie to t ancient practiſe that hath confirmed this proſec tion in either Court, but eſpecially in the Eccle aſticall Court, which hath ſtill holden the triall ſuch Diffamations wherein ſin hath bin only ſoug to be puniſhed, untill now of late, that men ha ſtept over the bankes, of their authoritie and co founded either Juriſdiction with the promiſcuo acts one of another; when as the Statute it ſelfe plaine, that the Authors of this Statute or Decre whetherſoever you call it, which ſet theſe boun to either Law, in proceeding upon matters Diffamation, reſpected not ſo much the qualitie the crime, upon which the Diffamation grew, the manner of proceeding therein, ayming in t one at publique vendict, which is to be ſought o of the Eccleſiaſticall Law, and in the other at priva intereſt. which is to be had out of the Tempora Law.

Neither is an Action of Diffamation, a matter ſo light eſteeme or qualitie, (a mans fame or good name being in equall ballance with his life) as tha it ſhould be drawn away to be attendant on an other action that is of ſmaller weight or impor-

tance

ce than it ſelfe is: for this one of thoſe Actions ich for the ſpeciall preheminence thereof, are led *Actiones præjudiciales*, that is, ſuch that w ſmaller cauſes unto them, but themſelves are wne of none other, but ſuch as are like princi- or greater than themſelves are. So that unleſſe manner of proceeding bring theſe cauſes under compaſſe of the Common Law, in ſuch ſort as ve before ſhewed, the coupling of them with ther matter of the ſame Law, will hardly bring m under the triall thereof: for that there be few ons greater then it ſelfe is, ſo that if the crime be cleſiaſticall, howſoever it toucheth a Tempor- cauſe, the tryall ſhall be ſtill at the Eccleſiaſticall w. And the ſame that I ſay of Diffamations ng out of Eccleſiaſticall crimes, I hold alſo be true in Diffamations ſpringing out of mporall crimes, where puniſhment is required the offenſe committed, and amends in mony ot demanded, unleſſe happily that grow of pe- ce injoyned, which the offender will redeeme giving mony to the Judge, or to the party grie- d. And this I take to be a farre better limitation either Law, having the ground of the Civile w, and a Statute of the Common Law, and mmon reaſon it ſelfe for it, than the other di- e is, which ſo diſtinguiſheth this buſineſſe, as l it makes it reſt in the mouth of the Judge, hich cauſe of Diffamation is meere ſpirituall, and hich not, which were not to be done if there re clear dealing in the matter: for Lawes are to be made, as that as little as may be, be left to

the

the diſcetion of the Judge, but all be expreſſed farre as the nature of the cauſe will give lea which albeit it be hard to doe, for the varietie the caſes that every day happen, never thoug on before, yet that is to be laboured ſo farre may be; for this libertie of leaving many things the Judges diſcretion, is many times great occaſio of confuſion in Judicature, ſaying ſometimes th and ſometimes that, as his private humor ſh lead him: and therefore a plaine diſtinction be tweene both the Lawes were beſt, that every ma may ſee, and ſay what is proper to either of them.

SECT. 2.

That the ſuit of Baſtardie, as well in the principa as in the incident that belongs unto the Eccleſia ſticall Law.

AND thus farr as concerning matters of Diffa mation. Now followeth that I ſpeake o matters of Baſtardie.

Baſtardie is an unlawfull ſtate of birth, diſable by divine and humane Lawes to ſucceed in inhe itance.

Of Baſtards, ſome are begot and borne of ſingl women, (in which ranke alſo I put widowes) ſom other of married women.

Of ſingle women, ſome are ſuch as a man ma make his wife, if himſelfe be ſole, and unmarried as thoſe that are kept as Concubines in place of mans wife; ſome other are ſuch as a man cannot

ke his wife, although himſelfe be ſole and un-rried, for that either they are already precon-acted to ſome other, or that they be in ſo neer degree of affinity or conſanguinity one to the o-er, that the marriage would be damnable, and e iſſue thereof unlawfull.

Of ſuch as are begotten of ſingle women, by ſin-men, who are in caſe to marrie them if they l, ſome are called by the Civile Law *Filii Na-rales*, becauſe they were begot by ſuch as they ld for their wives, and yet were not their wives, o might be legitimate by ſundry waies, as here-er ſhall be ſhewed.

ome other begot of ſingle women, if they were be-t in vage luſt, without any purpoſe to hold ſuch ne for a Concubine, but upon a deſire only to ſfy a mans preſent luſt, whether they were be-tten by married men or ſingle men, were called rii, who for the moſt part are putative chil-n, and their father is not otherwiſe known then the Mothers confeſſion, which ſome times ſaith e, ſome times otherwiſe. *Iſidore* ſaith, they re ſo called becauſe they were borne out of pu-, for that ſuch kinde of luſt is contrary to holy trimony, whoſe bed is undefiled, and therefore other is corrupt and abominable.

But where any was borne of a woman ſingle or rried, that proſtituted her ſelfe to every mans ſure, and made publick profeſſion of her ſelfe be an harlot, (ſuch as they are whom the Law eth *Scorta*) theſe were called *Manzeres*.

Thoſe which were begotten of married women

were called *Nothi*, becauſe they ſeemed to be hi children whom the marriage doth ſhew, but ar not, no otherwiſe than ſome feavers are called *Ne tha*, that is, baſtard feavers, becauſe they imita the tertian or quartan Feaver in heat, and othe accidents, but yet are neither tertians nor quar tans, as the learned Phyſitians well know: but the are counted ſo to be baſtards, if either the hu band were ſo long abſent from his wife, or by n poſſibility of Nature the child could be his; or th the Adulterer and Adultereſſe were ſo known t keep company together, as that by juſt account o time, it could not fall out to be any other man child but the Adulterers himſelfe: and yet in the very caſes within this Realme, unleſſe the husba be all the time of the impoſſibility beyond the Sea the Rule of the Law holds true, *Pater is eſt quem nuptiæ demonſtrant.*

The moſt nefarious and laſt kind of Baſtards ar they whom the Law calleth *Inceſtuoſi*, which ar begot between Aſcendents and Deſcendents *in in finitum*, and between Collaterals, ſo farre as th Divine Prohibition of the right interpretatio thereof doth ſtretch it ſelfe.

The effects of theſe ſorts of Baſtardies are di verſe.

Firſt, it ſtaineth the bloud, for that he that is Baſtard can neither challenge Honour nor Arm from the Father or Mother, for that he was bego and borne out of Matrimony, which is the fir ſtep to Honour: and therefore the Apoſtle called *Heb.*13.4. Marriage honourable, whereupon it muſt follow tha

t the oppoſite thereof is ſhame; for, albeit it be
ſin for a Baſtard to be a Baſtard, yet it is a de-
t in him to be ſuch a one, and a thing eaſily ſub-
to reproach.

Secondly, it repelleth him that is a Baſtard,
m all ſucceſſion, deſcending from the Father or
Mother, whether it be in Goods or Lands, un-
e there be ſome other collaterall proviſion
de for the ſame: for that all ſuch Lawes and
tutes as are made to any of theſe purpoſes,
e intended to the benefit of ſuch as are legiti-
te, and are next of kin by lawfull ſucceſſion, and
by unlawfull conjunction.

To legitimate him that was a Baſtard, when
e could no claime be made unto his birth-
t but by grace, among the *Romans* were ſun-
wayes; firſt where the Father of the Baſtard
y being both ſingle perſons) married the wo-
n, by whom he begot the child; ſecondly,
re the father did by his laſt Will and Teſta-
nt, or by ſome publick inſtrument ſubſcribed by
neſſe, name him to be his naturall and lawfull
ne, or ſimply his ſonne, without the addition
any of theſe two words, baſe, or naturall, and
re withall did make him his heire, which could
be, but in ſuch caſes only, where the Father
no other naturall and lawfull childe left a-
e.

Thirdly, whereas the Prince by his Reſcript, or
Senate by their Decree, did doe any one that
dit, as to grant them the favour of legitimation,
ich was done, for the moſt part, in ſuch caſes

only, where either the father of the Childe, or the Childe himselfe, offered himselfe to be attendant on the Court or Prince.

In this Realme, none of the foresaid legitimations take place, as farre as I can learne, but only that which is done by Parliament, and that very rarely; for besides those that King *Henry* the eight did in the variety & mutability of his mind towards his own issue, I think there cannot be many examples shewed: for, as for that which is wrought by subsequent Marriage, being a thing anciently pressed by the Clergy of this Land, to be admitted in like sort, as it is used in other Lands where the Ecclesiasticall Law taketh place; it was rejected by the Earles and Barons with one voyce, and answer was made, that they would not change the Lawes of the Realme in that point, which in that time had been used and approved. All the cases of Bastardie in other Lands, whether they be such or not such, are triable by the Ecclesiasticall Law: But here with us it is questionable, to what Law, and how farre they doe appertaine, whether to the Ecclesiasticall or Temporall.

28.8.*cap.*7

1. *Mar.* 1. *parliament. cap.* 1.

For the matter of Bastardie, what it is, the Ecclesiasticall Law, and the Temporall differ not, but there is a diversity between them in the prosecution thereof, for the *Ecclesiasticall* Law bringeth in two waies in Judgement; the one incidently, the other principally; but the Common Law maketh two sorts thereof, the one generall, the other speciall: But first of the Ecclesiasticall division, then of the Temporall.

Bastar

ſtardie is then ſaid to be incidently propounded, ſ
en it is laid in barre of ſome other thing, that is
incipally commenced; as when one ſueth for an
eritance that he pretendeth is due unto him by
nativitie, an other croſſeth him therein, by
ecting againſt him baſtardie, with purpoſe to
ude him from his action in the inheritance:
e the barre is in the incident, becauſe it comes
loſively to the action of inheritance, but the
on for the inheritance it ſelfe was in the princi-
, for that it was begun in conſideration of the
eritance, and not with intent to prove himſelfe
imate: which happily hee never dreamed of,
n he firſt entered his action for the inheritance.
hich caſe, he which is charged with the baſtar-
may require himſelfe to be admitted to prove
ſelfe legitimate, before the Eccleſiaſticall Judge,
to bee pronounced to be ſuch a one, *Ad* *Glanvill*
iam enim Regiam non pertinet agnoſcere de *lib. 7. cap.*
ardia: Againſt which the Law of the Land doth 13.
oppoſe it ſelfe, but acknowledge it to bee the
t of the Church. And yet to avoid all ſubtill *9. Hen. 6.*
ſurreptitious dealing in this behalfe, it hath ſet *ca. 11.*
wne a warie and cautelous forme of proceeding,
which the ſame ſhall be brought unto the
dinarie, and ſuch as have intereſt in the ſuit, may
e notice thereof, and time to object in forme
Law againſt the proofes and witneſſes of him
t pretends himſelfe to be *Mulier*, if they ſo
ke good: and what ſhall be certifie herein by
e Ordinarie, as concerning the nativity of him
at is burthened to be a Baſtard,) that is, whether

Glanvill lib. 7. cap 15.

hee were borne before or after his Parents marri age) ſhall be ſupplied in the Kings Court, either b judging for, or againſt the Inheritance.

But Baſtardie is then taken to bee principall propounded, when either one finding himſelfe be greeved with ſome malicious ſpeech of his a verſarie, reproaching him with Baſtardie, or hi ſelfe fearing to be impeached in his good name, right, doth take a courſe to cleere his na vity, by calling into the Law, him or them whom hee is reproached, or feareth to impeached in his right and credit, to ſee him, prove himſelfe legitimate, and to alledge & obj againſt it, if they ought have, or can have to contrary: which if either they doe not, or doing the utmoſt what they can, can bring no goo matter againſt his prooſe, but that it ſtands good and effectuall in Law, to all intents and poſes whatſoever (although perhaps hereby h ſhall not be able to carry the inheritance, both fo that it appertaineth not to the Eccleſiaſticall La to judge of Lands, Tenements or Hereditaments; alſo for that there is a preciſe forme ſet downe b Statute, how ſuits of this nature ſhall be recove ed) yet if no oppoſite or contradicter appea herein, and the ſuit was onely taken in hand agai ſuch, as either openly reproached him, or ſecret buzzed abroad ſlanderous ſpeeches, as concernin his legitimation: it is not to be doubted, but by accident alſo it will be good for the inheritance ſelfe, for where a mans legitimation is ſufficient proved, thereon followeth all things which natu rally thereto belong. But if any man urge the form

9. Hen. 6. c. 11.

the Statute, being intereſſed therein, then muſt neceſſarily be followed, for that otherwiſe it ould be thought, all that was done before, ſo re as it may concerne the inheritance, although were but in a conſequence, were done by colluſi-. This kinde of proceeding hath been much re in uſe in former times then it is now, and er any oppoſition made againſt it: but now it eth not altogether cleere without contradiction, many other things are offenſively taken, which withſtanding have good ground, and ſufficient rrant for them.

And ſo farre as concerning the Eccleſiaſticall oceedings in this buſineſſe: Now to the Tempor- ſorts of them.

Generall Baſtardie is ſo called. becauſe it comes incidently, and is in groſſe objected againſt ſome ſue in a matter principall, to diſappoint his . This ſuit, becauſe it is of the Eccleſiaſticall gniſance, it is ſent by the Kings writ to the dinarie, with certaine additions for more per- icuity of the inquirie thereof; as that whether that is charged with the Baſtardie, were borne lawfull Matrimonie, or out of Matrimonie, or ether he were borne before his Father and ther were lawfully contracted to gether in trimony, or after. All which the Ordinarie kes inquirie upon by his owne Ordinarie and ſtorall authoritie; for that matters of Baſtardy e originally belong to the Eccleſiaſticall Court, d not the Temporall: And as hee findes the ueth of the matter by due examination to bee *Lib. Intrac. fol.* 35.

this, or that, ſo hee pronounceth for the ſame in his owne Conſiſtorie, and makes certificate there upon to the Kings Court accordingly; and as hee pronounceth; ſo the Temporall Judges follow his ſentence in their Judgements, either for, or againſt the Inheritance that is in queſtion.

Bracton. Speciall Baſtardy they ſay is that where the Matrimonyis confeſſed, but the priority or poſteriorities of the Nativity of him whoſe birth is in queſtion, is controverſed; which to my thinking if I conceive aright, is no other thing then the generall baſtardie, tranſported in words, but agreeing in ſubſtance & matter with the other: for even theſe things which they pretend make ſpeciall Baſtardie, are parts and members of the generall Baſtardie, and are either confeſſed or inquired upon by vertue of the Kings writ in the ſame: For firſt for the Matrimonie that is here mentioned, it is there agniſed both by the Plaintife in pleading of it, and the Defendant in the anſwering thereto, and therefore the Plaintifes plea is thus; Thou art a Baſtard for that thou waſt borne before thy parents were lawfully contracted together in Marriage, or before their Marriage was ſolemnized in the face of the Church: To which the Defendants reply is, I am no Baſtard, for that I was borne in lawfull Matrimony, or that I was borne after that my Father and Mother were lawfully married together. In both which you ſee, there is a Marriage confeſſed, and the queſtion onely is of the priority or poſteriority of the nativity of him that is charged withall, whether it happened before, or after his parents

rents marriage, which, as they hold, is the other mber of ſpeciall Baſtardie: and yet this priority posterioritie of nativity, by vertue of the Kings rit, comes no leſſe in inquirie to the Ordinarie the caſe of the generall Baſtardie, than they make to be traverſable in the ſpeciall Baſtardie; and erefore the writ to the Ordinary for generall ſtardie, is conceived in this manner: *viz. Inquiis utrum prædictus A. pars rea, genitus vel natus it ante Matrimonium contractum inter talem trem ſuum, & talem Matrem ſuam: vel poſt.* So at either they muſt confeſſe there is no ſuch ſtardie, as they make ſhew there is, diverſe from at is tried before the Eccleſiaſticall Judge, or at themſelves doe confound the members that ould divide the ſame, and make them one, or the her, as them liſt; for both ſimply they connot be, leſſe they be diſtinguiſhed with other notes and ferences, than hitherto I finde they are. But to the truth, if theſe things be well weighed and nſidered, ſpeciall Baſtardie is nothing elſe, but e definition of the generall, and the generall gaine is nothing but the definite of the ſpeciall: r whoſoever is born out of, or before lawfull atrimonie, hee is a Baſtard, and he againe is a ſtard that is borne before, or out of lawfull atrimony, ſo that theſe things to bee a Baſtard, d to bee borne out of lawfull Matrimony are nvertible one with the other: ſo then as it were ry hard to make a divorce betweene theſe things at are ſo neere in nature one to the other, being nuertible termes one to the other; ſo hard againe it

Lib. Intrac. fol. 35. Glanvill lib. 7. cap. 15.

it were in policie to disjoyne these things in triall that are so neere in affinitie one to the other, because they are the same, in substance and nature as the other are, and therefore *Eodem jure censeri debent*; And also *ne continentiæ causarum dividantur*, which is no lesse absurditie in Law, than it is grossenesse in other learning, to deny a principle or generall Maxime of the profession.

12. q. c. 2. cognovimus

And so farre hitherto as concerning the reasons and arguments, that may be brought against this speciall Bastardie. Now it resteth that I shew by ancient precedents, that both these sorts of Bastardy have appertained to the Ecclesiasticall Court only, and the first precedent is in the incident the other in the principall: and the precedent is no lesse ancient then *Henry* the seconds time, even that which happened under *Alexander* the third about the yeare of our Lord 1160. and the case is this.

Cap. Lanor. ext. qui filii sunt legitimi.

A certaine man of *Norwich* Dioceſſe called *R.H.* issue *I.H.* who had a Son called *C.H.* *I.H.* deceasing before *R.H.* the Father, *C.H.* succeeded in his Grandfathers Inheritance, his said Grandfather being dead; but *M.H.* Brother to the said Grandfather, pretending that the said *I.H.* was a Bastard, draweth the said *C.H.* into the Temporall Court upon the Inheritance; whereupon *C.H.* called the said *M.H.* into the Bishop of *Norwich* his Court for the triall of his nativity; but the Bishop long protracting the cause, *C.H.* appealed to the Pope who delegated the same cause to the Bishop of *Exceſter*, and the Abbot of *Hereford*, with order

That

hat if the ſaid *M.H.* ſhould not within two oneths, prove that which hee objected againſt *C.* that then they ſhould intimate the ſame to the ular Judge, before whom the inheritance was queſtion, that he ſhould not ſtay any longer upon e queſtion of legitimation, but proceed to dgement in the cauſe of the inheritance. Which ident, though it be long before the Statute of ſtardie, made by *Henry* the 6. and ſo no writ nt from the Temporall Court, for the certificat reof: yet it ſhewes, that the Temporall Judges thoſe dayes did not proceed to Judgement in e principall cauſe, before the incident were deci- d by the Ordinarie; and that they counted ſtardy then to be of the Eccleſiaſticall cogniſance; d that it was lawfull for him that was pretended be a Baſtard, to appeale from his Ordinarie, if her the Ordinarie detracted the determination reof, or were ſuſpected of partiality.

And thus farre of the incident. There is an other ch like precedent to this in the ſame Kings yes, but that is in the principall, for that the in- ritance came not firſt in queſtion, but the itimation it ſelfe, and the caſe is as followeth. A rtain man called *Ralph*, kept one *Analine*, the ife of one *Allin*, by whom he was ſuppoſed to ve begot one *Agatha*, who alſo being married, d a Sonne called *Richard*; *Ralphe* going beyond e Sea, left *Richard* and his Mother *Agatha* in ſſeſsion of all his goods and lands; but newes be- g after brought, that the ſaid *Ralphe* was dead eyond the Sea, *Francis* the Brother of the ſaid *Ralphe*,

Cap. Cauſam. ext. qui filii ſunt legittmi.

Ralphe, ſpoyled the ſaid *Richard* of the poſſeſsion of all the goods and lands he had of the ſaid *Ralphe* his Grandfather, for that he did pretend the ſaid *Agatha* his Niece, and Mother of the ſaid *Richard* was not borne of lawfull Matrimonie, ſo that neitheir ſhee her ſelfe, nor her ſonne ought to ſucceed the Brother of the ſaid *Francis*, but that the inheritance thereof did belong unto himſelfe; whereupon the ſaid *Richard* being thus ſpoyled by *Francis* his great uncle, obtained Letters of reſtitution to the Biſhop of *London*, the B. of *Worceſter* and the B. of *Exceſter*, under this forme: That before they entred into the principall cauſe; which was this, Whether the ſaid *Agatha* were borne in lawfull Matrimonie, or not, they ſhould reſtore the ſaid *Richard* ro his Grandfathers inheritance. But the Biſhop of *Rome*, after under underſtanding by the ſaid Delegates, that the plea of inheritance within this Realme, did not belong unto the Church, but unto the King, recall'd that part of his reſcript, which concerned the reſtitution of the ſaid *Richard* to his inheritance, and gave order to the foreſaid Biſhops, to proceed in the cauſe of legitimatiō; willing them to inquire, whether the ſaid *Agatha* were borne of the ſaid *Aneline* in the life time of her husband *Allin*, & when ſhe dwelt and cohabited with him, as with her husband; or whether the ſaid *Ralphe*, Father of the ſaid *Agatha* kept the ſaid *Aneline* openly and publickly, while the ſaid *Allin* yet lived; And if they found it to be ſo, then they ſhould pronounce her the ſaid *Agatha* to bee a Baſtard, for that *Aneline* her Mother could

uld not be counted to be a wife, but a whore, hich defiling her husbands bed, preſumed to keep mpany with another, her husband yet being alive: t if they found it otherwiſe then they ſhould onunce her, the ſaid *Agatha* to be legitimate. l which was done after the death of the ſaid lph and *Aneline*, as the Decretall it ſelfe ſhewes: ither was there any authoritie that oppoſed it fe againſt that proceeding, but held it to be od and lawfull, though it were in terme of ciall *Baſtardie*, for then that which they now ll ſpeciall *Baſtardie*, was not borne. *Beſides* reby it appeareth, that the Ordinaries then did ot onely proceed in caſes of *Baſtardie* incidently, at is, when a ſuit was before begun in the Com- on Law, upon a triall of inheritance, and that by it from the Temporall Courts, but even origin- y, and that to prepare way unto inheritance, or y other good that was like to accrue unto a man ſucceſſion, or to avoid any inconvenience that ight keepe him from promotion, as may appeare this practiſe following.

Prieſts in the beginning of the Raigne of *Henry* e 3. yet married ſecretly, and their children were ounted capable of all inheritance, and other be- fits that might grow unto them by lawfull arriage, ſo that they were able to prove that heir parents were lawfully married together by itneſſes, or inſtruments: which many children did, ither upon hope of ſome preferment, that by ucceſſion or otherwiſe was like to come unto hem, or to avoid ſome inconvenience that other-

Conſtitut. Otho innot uit de uxo- ratis à beneficiis amovendis,

wiſe

wiſe might light upon them for the want of that proofe, ſome their Parents yet living, others their parents being dead, and the proceedings before the Ordinary was holden good, to all intents and purpoſes, even in the Common Law, for otherwiſe they would not have ſo frequented it: for as yet there was made no poſitive *Law* againſt marriages of Prieſts, and Miniſters, but the Church of Rome then plotting againſt it, (for that by that they pretended the curſe of Soules was neglected, and the ſubſtance of the Church waſted and diſſipated) did by *Otho* then Legate *à Latere* to *Gregory* the ninth order by a Conſtitution, that all ſuch Miniſters as were married, ſhould be expelled from their *Benefices*, and their Wives and Children ſhould be excluded from all ſuch livelihood, as the Fathers had got during the time of the Marriage, either by themſelves, or by any middle perſon, and that the ſame ſhould become due unto the Church, wherein they did reſide, and that their children from that time forth ſhould be diſabled to injoy holy orders, unleſſe they were otherwiſe favourably diſpenſed withall; which Conſtitution although it wrought to that effect, to barre Prieſts for that time of their Marriage, untill the light of the Goſpell burſt out, and ſhewed that that doctrine was erronious, yet to all other effects, the proceeding in the caſe of *Baſtardie* ſtood good as a thing due to be done by holy Church. And therefore *Linwood* comming long after, in his Catalogue that he maketh of Eccleſiaſticall cauſes, reciteth Legitimation for one among the reſt, for that

at in thoſe daies there was no diſpute or practiſe the contrarie.

And thus farre as concerning thoſe things herein the Eccleſiaſticall Lawes are hindered by e Temporall in their proceedings contrary to w, Statute and Cuſtome anciently obſerved, hich was the third part of my generall diviſion. ow it followeth that I ſhew wherein the Eccleſi-icall Law may be relieved, and ſo both the wes know their own bounds, and not one to er-beare the other as they doe at this day, to e great vexation of the Subject, and the intolera-e confuſion of them both, which is the laſt part this Treatiſe.

PART. IV.

PART. IV.

CHAP. I.

SECT. 1.

The meanes how to relieve the Civill Law: that the are of two ſorts: that two things are required t the firſt means, and that the former of theſe is th right interpretation of Lawes, and what that is.

THe means therefore to relieve the profeſſion of the Civile Law are two. The firſt is, by the reſtoring of thoſe things which have been po werfully by the Common-Law taken from them and the bringing of them back againe unto thei old and wonted courſe: The other is by allowing them the practiſe of ſuch things as are grievance in the Common-wealth, and fit to be reformed by ſome Court, but yet are by no home-Law provi ded for.

The firſt of theſe ſtands in two things, whereo the one is the right interpretation of the Lawes Statutes, and Cuſtomes which are written, and de viſed in the behalfe of the Eccleſiaſticall Law. Th other conſiſteth in the correcting and ſupplying o ſuch Lawes and Statutes that are either ſuperflu ous or defective in the penning, made in the be halfe

alſe (as it is pretended) of the Eccleſiaſticall pro-ſion, but yet by reaſon of the unperfect penning hereof, are conſtrued for the moſt part againſt hem.

The right interpretation of the Law, Statutes, nd Cuſtomes pertaining to the practiſe, ſtandeth s is pretended in the Judges mouth, who not-ithſtanding hath that authority from the Sove-aigne, and that not to judge according as him eſt liketh, but according as the right of the cauſe th require.

The ſupply or reforming that which is over-s, or defective, is in the Parliament, ſo notwith-nding as that the Prince evermore breatheth into that which is done.

Lawes, Statutes, or Cuſtomes, are then beſt in-preted when as the very plaine and naturall ſe of them is ſought after, and no forraine or ined expoſition is mixt with them; for that neth juſtice into worme-wood, and judgement o gall: then that the Judge be not too ſubtill his interpretation, but follow ſuch expoſition of Lawes, as men of former age have uſed to make, they be not plainly abſurd, and erroneous, for ſhifting of Interpretations breedeth great vari-ce in mens ſtates, among ſuch as have buſy heads, much diſcrediteth the Law it ſelfe as though re were no certainty in it: with which although ſage Judges of our time cannot be charged, for ght that I know, yet (I cannot tell how) men ch complaine the Lawes are farre otherwiſe nſtrued in theſe daies, than they were; in former

ages: which as it is an ordinary complaint in the Temporall Courts, ſo it is not without cauſe, much lamented at the Spirituall Court, where the interpretation upon the three Statutes of Tythes made by King *Henry* the eight, and *Edward* his ſonne, among other inconſtancies of other Lawes, hath ſuch great variety of ſenſe and underſtanding in ſundry points thereof, as that if the makers thereof were now alive, and the firſt expoſitors thereof ſate in place of Judgement againe (the Statutes being meaſured by the interpretation they now make of them) would hardly acknowledge them either to be the Statutes that they then made, or the other did after expound, and declare: for every of theſe Statutes and the ſenſe, that was given of them, was wholy for the benefit of the Church according to the tenor thereof, but as they now receive explication, they are not only not beneficiall unto the Church, but the greateſt hinderance to the ſame that may be; for the words are made to jarre with the ſenſe, and the ſenſe with the words, neither is there kept any right analogy in them: and therefore the Reverend Judges are to be intreated (becauſe they challenge unto themſelves the opening of the Statutes alone, albeit peradventure that be yet *ſub judice*, where the Statute of Eccleſiaſticall cauſes is to be interpreted) that they would recall ſuch exorbitant interpretations as have of late gone abroad upon theſe Statutes, and reſtore them to their ancient ſenſe and underſtanding. No man can ſo cunningly cloake an interpretation, but another will be as cunning as he

to

ſpie it out, and then the diſcredit will be the
awes. *A ſmall errour (* ſaith *Ariſtotle) in the be-* *Lib.* 1.
inning, is a great one in the end, and he that goeth *Politic.*
t of the way a little, the longer he goeth on, the far-
er he is off from the place his voyage was to: and
erefore the ſpeedier returne into the way again
beſt. The old Proverbe is: *He that goeth plain-*
goeth ſurely, which may be beſt verifyed in the
poſition of the Law, if any where elſe; for com-
only men offend no where more dangerouſly
an under the authority of the Law, and there-
re one ſaith very well, that *there are two ſalts re-*
ired in a Judge, the one of knowledge, whereby he
y have skill to judge uprightly; the other of conſci-
ce, whereby he may be willing to judge according to
t as his skill leadeth him unto: both which be-
in the grave Judges, it is not to be doubted,
t they will be eaſily induced to review their
n, and their predeceſſors interpretations, and
luce ſuch exorbitant expoſitions as have ſcaped
t thereof unto the right and naturall ſenſe there-
which if perhaps they ſhall be loath to doe,
r becauſe it makes for them, or for ſome other
e partiall reſpect, then humble ſupplication is
be made unto his Majeſty, that he himſelfe will
pleaſed to give the right ſenſe of thoſe things
hich are in controverſy between both the Juriſ-
ctions: for his Majeſty by communicating his
thority to his Judge to expound his Lawes,
th not thereby abdicate the ſame from himſelfe,
t that he may aſſume it againe unto him, when
d as often as he pleaſeth. Whoſe interpretation

in that is to be preferred before theirs, firſt for that his interpretation is impartiall as he that will not weaken his left ſide to make ſtrong his right (for ſo are theſe juriſdictions as they are referred unto his politique body) but will afford them equall grace, and favour, that he may have like uſe of them both, either in forraigne or domeſticall buſineſſe, as occaſion ſhall ſerve: then that his Judges interpretation maketh right only to them between whom the cauſe is, but his highneſſe expoſition is a Law unto all, from which it is not lawfull for any Subject to recede, neither is it reverſeable by any, but by himſelfe, upon a ſecond cogitation; or him that hath like authority as himſelfe hath: and therefore moſt fit to be interpoſed between Juriſdiction and Juriſdiction, that the one party be not Judge againſt the other in his owne cauſe, which is both abſurd and dangerous.

L. 1. num. 8. C. de legibus. L. 1. num. 7. C. eod. l. omnes populi ff. de juſtit. & jure.

And let this ſuffice for the right interpretation of Lawes and Statutes: Now it followeth that I ſpeak ſomething of the ſupplies that may be made to the defects that are in the ſame.

SECT. 2.

The ſecond thing required to the firſt correcting of Superſtition, and ſupplying of defective Statutes.

IT is not to be doubted, but it was the full mind and intent of the Lawmakers, which made thoſe three Statutes to infeoffe the Eccleſiaſticall Courts in the inheritance of all thoſe cauſes that are

e compriſed in thoſe Statutes, ſave thoſe that
e by ſpeciall name exempted, and that they did
the ſaid Statute, as it were deliver unto them
l and quiet poſſeſſion of the ſame, for even ſo
ndry branches of the ſaid Statute do ſhew, as I
ve elſewhere made it manifeſt: and that there
th grown queſtion upon many points thereof,
d that the profeſſors of the Eccleſiaſticall Law
ve been interrupted in the quiet poſſeſſion there-
, commeth of the unperfect penning of the ſame,
d not of any juſt title or claim that may be made
the profeſſors of the other Law thereunto: but
s is a thing not only proper to theſe three Sta-
es, but alſo common to all other Statutes which
e writ of any Eccleſiaſticall cauſes within this
nd; which notwithſtanding may be remedied,
ſeem good unto his ſacred Majeſty and the reſt
the wiſdome of the land aſſembly together at
y time for the making of wholſome Lawes, and
reforming of the ſame, by ſupply of a few
ords in ſome places, or periods that are defe-
ve, and yet keeping the true meaning and ſenſe
the ſame.

As for example in the Statute of the two and
irtieth of *Henry* the eight, in the § wherefore,
ere the beginning of the ſame Statute, the Statute
dering, that all perſons of this Realme, and
her of the Kings Dominious ſhall truly, and
fectually ſet out, and pay all and ſingular Tythes,
cording to the lawfull cuſtomes, and uſages of
Pariſhes where they grow, and become due:
cauſe there is a queſtion made where theſe

cuſtomes & uſages ſhall be tryed, in the Eccleſiaſti-
call or Temporall Law; if theſe or the like word
had beene added to the ſame (to be proved be-
fore an Eccleſiaſticall Judge after the forme of th
Eccleſiaſticall Law, and not elſewhere) the whol
matter had beene cleare for that point.

And whereas againe in the end of the ſam
Statute, there be ſome good words tending to th
appropriating of theſe matters of Tythes, and ob
ligations, and other Eccleſiaſticall duties to th
Eccleſiaſticall Court: and that the remedie for the
ſhall be had in the Spirituall Court according t
the ordinance of the firſt part of that Act, and no
otherwiſe: yet becauſe there is no penaltie to th
act, buſie men eaſilie make a breach thereinto, ſo
that Lawes without penalties, for the moſt part a
weake & of no force: if therefore this or the hi
ſupply were made (if any man ſue for theſe, o
like duties in any other Court, than in the King
Eccleſiaſticall court, the parties ſo ſuing, to forfe
the treble value of that which he ſued for, to b
recovered in the Kings Eccleſiaſticall Court, wher
it ought to have bin commenced, by the way o
Libells, or Articles, the one halfe thereof ſhall be t
the King, the other to the partie grieved) man
of theſe ſuits would eaſily be met withall. Neithe
is it to the purpoſe that this is matter of mon
and Lay-Fee that ſhould be in this ſort forfeite
and therefore is not Regularly to be ſued for i
the Eccleſiaſticall Court; for ſeeing the cauſe
Eccleſiaſticall, upon which the matter of forfeitu
ariſeth, it may be very well allowed, *Ne continenti*
cauſarum

uſarum dividantur: and for that ordinarily
ery juriſdiction that is wronged may defend it
ſe with a penaltie: beſide, we do by the like
ght in the Eccleſiaſticall courts recover expenſes
ſuits in Law, fees of Advocates, & Proctors, &
ony for redemption of ſin, ſo that it will be no
range matter to have this kinde of ſuit allowed
o the Eccleſiaſticall Court.

Further, whereas there are in the Statute of
dward the ſixt, chapter 13. in the beginning
moſt of the ſaid Statute two clauſes under paine
forfeiture, one of treble value, for Tythes carried
ay before they were divided, ſet out, or agreed
r: The other of double value where the Tythes
re hurt or impared by the partie ſtopping or
ting him that had intereſt thereunto to carrie
em away, or by withdrawing, or carrying them
ay himſelfe; & the ſame is ordered by a clauſe in
e ſecond branch thereof reaching unto them
th (for that a clauſe put in the end of two
tences, ſtretcheth it ſelfe indifferently unto them
th, if there be no more reaſon it ſhould belong
the one than the other, as there is not in this
ſe, for if it were nor ſo, the firſt penalty had no
der ſet down, how it might be recovered) that
e ſame ſhall be recovered according to the Kings
cleſiaſticall Law: to which if there were added
is word [only] and not elſe where, or other-
iſe, and they martialled in their right places,
here were nothing more ſure or ſtrong.

Moreover, whereas in the firſt proviſo of that
tatute it is decreed, that none ſhall be compelled

to pay any manner of Tythes for any Hereditaments, which by the Lawes or Statutes of the Realme, or by any Priviledge, Preſcription, or Compoſition Reall, are not chargeable therewithall; whereby it is doubtfull in what Court the ſaid Exemptions are to be alledged: if there were inſerted theſe words, or other of like nature [the ſaid Lawes, Statutes, Priviledges, Preſcriptions, or Compoſitions reall to be alledged, argued, traverſed and determined before the Eccleſiaſticall Judge onely according to the forme of the Eccleſiaſticall Lawes, and not elſe-where] upon like forfeiture of treble dammages, as is aforeſaid, would make this poynt ſure unto the Eccleſiaſticall Law.

Over and beſides this, whereas in the ſame Statute there is a diſcharge allowed to barren heath, and waſte ground, in ſome for not payment of tythes, in other for the manner of payment of them for the ſpace of 7. yeares, after the improving and converting of them into arrable ground or meadow; it would make the matter plaine, which Law ſhould haue the pronouncing thereupon, if there were added theſe or the like words [So the ſame ground be proved in forme of Law in the Eccleſiaſticall Court, to be barren, heath, and waſte.]

Laſtly, whereas in the ſaid Statute among other limitations of cauſes, wherein the Eccleſiaſticall Judge is not to deale by vertue of the ſaid Statute, there is one in theſe words, neere the end of the ſaid Statute [Ne in any matter whereof the King's Court of right ought to haue Juriſdiction] which limita-

nitatiõ is ſo vage & large, that thereout there may forged as many divers kindes of Prohibitions, as Poets fained *Vulcan* ever made thunderbolts *Jupiter*, And therefore it were very well and nſonant to the good meaning of the ſaid Statute, t this vageneſſe were reſtrained and reduced to more certainty of matter, by theſe or like words, By any ancient Law or Statute of this Land.]

And ſo farre as concerning the imperfection of ſaid three Statutes, and how they may be ended and made reducible to the firſt meaning d intent of the makers thereof, by ſome ſmall pply. alteration, or change of words, the ſenſe d ground-worke ſtanding ever the ſame, accor-ng to the wiſdome of his Majeſtie, and his great ouncell aſſembled in Parliament.

CHAP. II.

SECT. 1.

e ſecond Meane to relieve the Civile Law, which i, by allowing it the practice of ſuch things as are grievances in the Common-wealth. and fit to be reformed by ſome Court, but yet are not otherwiſe provided for: And firſt of the grievances which concerne Parents and Children, and how they may be relieved.

NOw it followeth, that I ſhew wherein the practice of the Eccleſiaſticall Law (under which

which I compriſe the Civile Law, ſo farre as it is in uſe amongſt us) may bee increaſed to the benefit of the ſubject, and the enlargement of the profeſſion, without the prejudice of the Common Law. And that I may firſt begin with the piety of Fathers towards their Children & children towards their Parents, which is the beginning of all Common-wealths; for even Nature it ſelfe hath taught that, not onely in the moſt brutiſh people that bee, but alſo ſetled it in the ſavageſt kinde of beaſts that are upon the earth, the one to cheriſh that which it ſelfe hath brought out, and the other to love againe that which hath brought it out: and yet, what Law is here in *England*, which provideth for the one or the other, unleſſe it be the Statute of the xliij. of *Elizabeth?* & that is but for poore folkes children onely (where otherwiſe they ſhould be a burthen to the Pariſh) but for the Parents themſelves, or other children that are caſt off, either by the negligence, or the unnaturalneſſe of the one toward the other, there is no proviſion at all. Yet by the Civile Law there is a purveiance made, whereby both the Father is compelled to acknowledge his childe, (if there be any variance betweene the huſband and the wife upon any jealouſie or ſuſpicion of Adulterie, if the ſame cannot bee proved by the womans own confeſſion, by witneſſes, by the act it ſelfe, or ſome other violent preſumption) and to nouriſh and maintaine the ſame; but if the fault appeare againe her, and it be ſo ſentenced by the Judge, then may he as well refuſe the one as the other: but for one childre

ff. de agnoſcend. et alendis liberis vel parentib. c. de alendis liberis vel parentib.

ff. de ventre inſpiciendo, cuſtodiendoq; partu.

ff. de officio conſulis, l. nequicquam §. de plano.

ildren upon whom there is no ſuch doubt, the rents may bee conſtrained to maintaine, clothe, d feed them, and to ſet them out a portion of eir goods, ſo that either the State and facultie the Parents will beare it, or the children have t deſerved to the contrary, wherefore they ould not in that ſort be provided for. And as e Father in this ſort is bound unto the Child; ſo e Childe againe is obliged unto his Parents, to ovide for their ſuſtenance, ſo far forth as their ilitie will reach unto: for it is very unnatural, at the Parents ſhould want, ſo long as the chil- en have meanes to releeve them. In both which es, if either the Parents refuſe to admit of their ildren, or the children again refuſe to yeeld com- rt unto their Parents, the Judge may interpoſe authoritie, and in joyne each to maintaine other cording to their ability, and as to his diſcretion all ſeeme meet, which if any of them ſhould de- to yeeld unto, the Judge may, by Diſtreſſe of eir goods taken and ſold to the value thereof mpell them to performe his order: and yet that ely in caſe of Maintenance, and not to diſcharge bts, wherein either of them ſtand bound unto eir creditors.

A man here in *England* dying, and leaving his ife Executrix, ſhee after marrying, carrieth away ll his State unto her ſecond husband, who gives d ſpends thereof as him liſteth, without any gard of the children of the firſt busband, (by hom all, or moſt of thoſe goods came) inſomuch, many times thoſe children when they come to age,

age, and are to goe abroad into the world, they have nothing to begin the world withall, whereby many of them come to beggerie, & others to more fearfull ends (for Neceſsitie, as the Proverb hath it, is a hard weapon) neither is there any meane in this Common-wealth to relieve this miſchiefe, for ought I can learne: but by the Civile Law there is very good remedy; for by that Law, neither the woman ſurviving her husband, neither the man ſurviving his wife, having iſſue betweene them during the Matrimony, have the propertie of thoſe goods, which either of them brougt one to the other, and are left behinde by the defunct; but the propertie is the childrens of the deceaſed, and the uſe or benefite his or hers only which doth ſurvive, during his or her naturall life: which courſe if it were taken here in *England*, many poore fatherleſſe and motherleſſe Children would bee in better ſtate than they are; for then howſoever their preſent eſtate were hard, yet their future would be better, they ſhould be ſecured to enjoy their fathers or mothers right: neither could ſuch men or women which marrie, or are married with perſons of this ſort, much complaine if this Law were eſtabliſhed here, for ſo ſhould they have, though not a perpetuity in an other mans ſtate, yet a long and beneficiall fruition thereof, even ſo long as the partie, in whom they were intereſſed did live: but for the returne thereof unto the right owners, the Law is ſo ſcrupulous, that if the husband or wife doe remarrie, it will have him that is to marrie the widow, bound with good ſuerties for due reſtitution

C. De ſecundis nuptiis tot tit.

n of the defunct's part, unto the children of the rmer marriage.

SECT. 2.

e Grievances which ariſe by Executors, and how they may be relieved.

AN other inconvenience there is in Executors in this Land, Coſen german to the former, hich goeth altogether uncontrouled, whereby I eſſe there is no Law in this Land to correct it: d that is, the trifling of Executors in paying of gacies and bequeſts, under pretence of debts knowne, which they make ſhew they muſt ovide for, upon danger of their owne indemnitie; hereby many Legacies are never paid, but ſtand, it were, ſuſpended untill the day of doome. ainſt ths abuſe, the Civile Law hath two reme-es: One by exacting bond of the Executor, that ſhall pay the Legacies without fraud or deceit, cording to the will of the defunct; the other, at if he refuſe ſo to do, then the Judge may put e partie complaynant in the poſſeſsion of that hich is demanded: for it is not enough for the eire or Executor to pretend a debt, to the end at hee may ſtay the Legacie, the Teſtator hath iven, in his hand, but he muſt make plaine and anifeſt unto the Judge, that there is ſuch a debt wing, and that the ſuit thereupon is either already egun, or very like to be begun in very ſhort time, ithout fraud or colluſion, other wiſ many of thoſe pretences

L. 1. §. 1. 2. & 3. ff. ut Legatorum nomine caveatur.

L. hæc autem ff. ſi ui plus quam per Legem falcidian. ff. de regulis juris L. vani timoris.

pretences and threats my be vaine and eluſory. And in caſe there be any ſuch juſt cauſe of feare in deed, or there be any ſuch ſuit in truth commenced upon the ſame, the Executor may ſecure himſelfe by bond or ſuertie from the Legatorie, that in caſe the debt be evicted of him, he ſhall repay to the Executor what he hath received: wherein, although it may be ſaid, it is ſafer for the Executor to ſecure himſelfe by keeping the Legacie ſtill in his hand, than to truſt upon ſuerty or other caution, for that theſe proviſions many times are fraile; yet ſince this kind of dealing is injurious to the Legatory, & the with-holding thereof, for the moſt part, hath no honeſt defence, but is grounded upon deceit and covetouſneſſe, it were behoovefull for the common-wealth, that ſuch ill dealing were redreſſed: for ſo mens Wils, which are their laſt Ordinances (than the which, Princes have granted to greater benefit to men, than that in their life time they may diſpoſe how their goods ſhall bee beſtowed after their death) ſhall have that end that the Teſtators themſelves intended: which if they had known in their life time, their Executors would not have performed, they would never have put them in truſt as they did. Beſides, hereby the names of Executors which now are charged with manifold imputations, by the ill dealing of ſome, ſhall by this meanes be unburdened & reſtored unto their former credit, which was, to diſcharge the truſt that by the defunct was repoſed upon them: for the Will of the defunct cannot bee defrauded without great ſin.

L. Niſi ſi dolo §. ſi Legatarius ff. ſi cui plus quam per legem falcidiam licuerit.

ff. Si quis omiſſa cauſa teſtamen. L. num facit totum, l. 4. ff. de haredib. inſtituend. l. paterfamilias. §. 3.

An

An other miſchiefe there is in Executors and dminiſtrators; not onely uncontroulable by the aw of this Land, but rather allowed & juſtified y it; and that is, when they have once got the thoritie into their hands, and priced all at the weſt rate, they will ſell away all at the higheſt rice they can, and anſwer the poore Children, & gatories, for whoſe good they were appointed ecutors, at the value in the Inventarie onely, ntrarie to all right and reaſon: for by the Law, Executor is to ſell nothing of thoſe things which left unto the Children, or Legatories, but ſuch ings onely, which by keeping cannot bee kept, or ich being kept, will be chargeable to the in- itance: or otherwiſe the Teſtator were ſo in- ted, that his ſtate muſt needs be ſold, for the ſfying of the Creditors: or laſtly, that he him- e ordered by his Will ſomething ſhould be ſold, for ſuch things as may be kept, and by keeping, ll not be the worſe, he ought preciſely to preſerve m, ſpecially where the Teſtator hath bequeath- any thing in kind. And if he ſell ought of oſe things hee ought not to ſell hee may ſell it but by the decree of the Judge, terpoſed upon the ſame, and upon juſt cauſe oved before him: wherin if it appeare after, the dge was abuſed, by any falſe allegation and rrupt teſtimony, the ſale is void, and the Minor, hen he comes to his full age, or within 5. yeares er, may reverſe & recover that which is thus ld by colluſion, out of the hands of him, to whom it

ff. de reb. eorum qui ſub tutela ſiunt ſine decreto non alienandis, vel obligandis, tot. tit. & ibi Bartol. in rubrica.

it was ſold, as being done againſt the authority o
the Law. And that it may be better underſtood
how preciſe the Law is in this point, and wha
things it alloweth may bee ſold without the decre
of the Judge, & what not, I will ſet downe th
words of the Law it ſelfe, ſpeaking of Tutors an
Governors of Puples; whoſe place Executors &
Adminiſtrators do ſupply, ſo far forth, as the
have the tuition & governance of Minors, durin
their under-age, faithfully tranſlated. And it is
law of *Conſtantine* the great, reproving a forme
law of *Severus* the Emperour, which gave leave t
Tutors and Curators to ſel away all the gol
ſilver, precious ſtone, apparell, & other rich move
ables the Teſtator had, and to bring the ſame int
money, which turned greatly to the hinderance o
many Orphans: whereupon *Corſtantine*, after h
had firſt ordered, that nothing ſhould bee ſold o
the pearle, precious ſtone, naperie, utenſels of th
houſe & other neceſſary ſtuffe & ornaments of th
ſame, ſaith thus. Neither ſhall it be lawfull fo
them, (meaning the Tutors or Curators) to ſe
the houſe wherein the Father died, and the child
grew up, wherein it is woe enough to the child
not to ſee his Anceſtours images not faſtened up, o
elſe pull'd downe. Therefore let the houſe, & a
other his moveable goods ſtill remaine in th
Patrimonie of the childe, neither let any edifices o
buildings, which came in good reparation with th
inheritance, ruine or decay by colluſion of th
Tutor: but rather if the Father, or hee whoſoeve
the minor was heire unto, left any building in d
cay

C. de adminiſtrat. tutorum, vel curorum. l. lex qua.

y, let the Tutor both by the Teſtimony of the ork it ſelfe, and the faith of many be compelled repaire it: for ſo the yearly rent will bring in ore profit to the Minor, than the price of the ings being deceitfully ſold under-foot, will doe e Minor any good. Neither doth this Law onely ake proviſion againſt Tutors, but alſo againſt modeſt and intemperate women, which many es engage unto their new married husbãds, not ly their own ſtate, but even the ſtate and lives their Children. Farther, it croſſeth the courſe putting the Childrens mony to uſury (notwithnding anciently it was thought, therein conſid all, the ſtrength of the Patrimony) for that urſe is ſeldome long, ſcarcely continuall and ſta-, and that thereby many times the mony being , the Childrens ſtate comes to nothing: and erefore his concluſion is, The Tutor ſhould ſell thing without the order of the Judge, ſaving e Teſtators over-worne apparrell, or thoſe ings, which by keeping could not be kept from rruption, and ſuch cattell as were ſuperfluous. hereby it appeareth, how carefull that age was, t to give way to Executors by ſale of the Teſtars goods, to make gain of the Orphans; neither this age better than that; but that which was red then, may be provided for now, by like aority as was then.

In this Land a man dying, leaving Legacies to children, and his wife Executrix, or dying inſtate, and ſhee taking adminiſtration, and in her cond marriage bringing all her firſt husbands

ſtate, and her Childrens portions unto her ſecond husband, and then dying, there is no remedy against the ſecond husband, to recover the ſaid legacies or portions due unto the Children out of his hands, becauſe he is neither Executor nor Adminiſtrator, and that he came not to thoſe goods by wrong, but by the delivery of the Executrix with whom he married: but yet by the Civil Law there is, and that by this claime, that the ſaid goods came unto his hands, and that it is no reaſon, any ſhould be made rich by my goods againſt my will: for Legataries have no action againſt any as Adminiſtrators in their own wrong, or hinderers of the performance of the laſt Will of the deceaſed, but Executors onely, and they then alone when the party having it, holds it by wrong, and not by lawfull delivery, which in this caſe is otherwiſe.

L. ſi ex me ff. de rebus creditis ſi certum petatur.

By the Law of this Land, there is no proviſion to preſerve the ſtate of a prodigall perſon from ſpoyle, which neither hath regard of time, nor end of ſpending, unleſſe the Father provide for this miſchiefe in his Will, or by ſome other good order in his life, but he is ſuffered to waſt and ſpend his goods untill there be nothing left (as though the Prince and Common-wealth had no intereſt in ſuch a Subject, to ſee he did not waſt his eſtate, and abuſe his goods) whereby many great houſes are overthrowne, and many children whom the Fathers carefully provided for, never leaving raking and ſcraping all their life time, that their Children after them might live in great plenty and abundance;

undance, come to great ſhame and beggery. But
he Civile Law hath remedy for it: for the Law
ounting ſuch a man that is in this ſort impotent in
is deeds, howſoever he be otherwiſe ſenſible in
his words, to be halfe mad, and to be a young man in his manners, how old ſoever otherwiſe he
e in his years, ſets a Curator over them for the
eſerving and well ordering of their ſtate no o-
herwiſe than if they were Children, or mad men
deed, who ſo long have power over them, and
eir goods, untill they come to ſane manners, to
hich if they once returne the Curators office
aſeth.

ff. de curatorib. furioſo, & aliis extra minores damdis.

The like they do to a widow or ſole woman
hich liveth riotouſly, having neither regard of
r fame, nor of her ſtate.

Let muli-eri. ff. eod.

I finde an old practice anciently uſed in the
cleſiaſticall Courts, for reſtraining Executors or
dminiſtrators for dealing covenouſly in an
ecutorſhip or Adminiſtratorſhip, when there
e more Executors named in a Will, than one, or
ore Adminiſtrators deputed by the Qrdinary in
Adminiſtration than one, which were well if it
re recalled: and brought back to his former uſe
aine. For now, as things ſtand many times one
pricious fellow named an Executor in a Will, or
pointed Adminiſtrator by the Ordinary with
ne other well-meaning men, getting a ſtart in
s buſineſſe of the reſt, ingroſſeth all into his
ne hands, and without privitie, or concurrence
the other, ſelleth, releaſeth, and diſpoſeth all at
owne pleaſure, contrary to the minde either of

the Teſtator, or the Ordinary who would not have named ſo many in the Will, or Adminiſtation, but to the intent that all might or ſhould execute and adminiſter, and one communicate their acts with another. The contrarie whereof is many times very prejudiciall and hurtfull, to thoſe that are to take benefit by the ſaid Will or Adminiſtration, who for the want of the due performance of this kinde of proceeding, are defrauded of all that which in right or reaſon ſhould have come unto them, either by the Teſtators good will, or by the benefit of the Law. And yet there is no remedie for this in Law, ſo farre as I know, for that all theſe making but one perſon in Law, the Law yields no action to the one to ſue the other: but yet the ancient practiſe of the Eccleſiaſticall Law hath remedie, which would redreſſe all this miſchiefe, if it were called again to uſe, & might goe without coutrolment, as the equity of the cauſe doth require. And the remedie is this, that ſuch other of the Executors or Adminiſtrators as are in this ſort interverted from the execution of the Will, or Adminiſtration by the ſubtiltie of any like Executor or Adminiſtrator, ſhould crave the aſſiſtance of the Judge, and will him by vertue of his office, to call in ſuch practique Executor or Adminiſtrator, and to command him under paine of excommunication, hee proceed no further in the ſole execution thereof, but communicate all his acts, and dealings with the reſt of his Coexecutors or Coadminiſtrators: which if it were ſo ordered, would make many mens Wills and Adminiſtrations better performed

rmed than they are, and a great ſort of poore rphans ſtates more ſure and certaine, than com-only they are in ſuch Executors or Adminiſtra-rs hands.

And certainly in this caſe, there is ſome good e of Supervisors in dead mens Wils (whom any men meerly jeſt at, calling them candle-olders, as though they could do nothing elſe in e execution therof, but hold the candle while the xecutors tell the Defuncts mony) if they might e permitted to put in practiſe that authoritie hich the Law giveth them, and that is when they de any Executor deale fraudulently in the ecution of any Teſtators Will, wherein they are med ſupervisors, or do iugroſſe all the ſtate of e Defunct into his hands, as hath beene before d, they call him to a particular account, that it y be ſeene how the adminiſtration ſtands, and ch Executor may communicate to other rticular receipts and disburſements: which if any all refuſe to do, then may the Supervisor make ereof complaint unto the Judge, as though the ſame man dealt not truly in the execution thereof, ho though perhaps in the beginning could not ke bond of him, for the true execution of the Wil becauſe the Teſtator had made choice of him, d therein approved his faith, and that no man re-uired caution of him for any Legacie in the Will equeathed, in which caſe the Judge might take ond of him for ſecuritie of ſuch Legacies as are equeathed in the Will, yea though his faith hath eene approved by the Ordinarie, as hath beene

ff De *adminiſtratione tutorum l.* 3. §. 1.

before remembred) yet may the Judge in this case if hee finde him justly suspected of fraud and deceit remove him by the learning of that Law. For neither the Testator himselfe, if hee were alive againe; would indure him in this case, but would blot his name out of his Will, neither ought the Judge to suffer him, whose care is to see that dead mens Wills take their effect, according to the Testators meaning. All which the Law hath provision, for, and for infinite things else of like good order in these cases, if they might be suffered to put them in execution without impeachment.

Instit. de suspectis tutororib. vel curator, toto tit.

And so far as concerning those things wherein the Civile, and the Ecclesiasticall Law might be relieved without prejudice to the Common Law, for because they have no practise thereof: and yet do not I bring forth these as the onely causes wherein the Civile and Ecclesiasticll Law may be licenced to deale in, over and besides the practise of those things that they have already, but that these are few among many other which might be sorted out if so be there were any hope for the furrther enlargement of the profession.

CHAP. III.

Of the necessitie of retaining the practise of the Civil and Ecclesiasticall Law in this Land.

But

BUt now to the neceſſitie of the maintenance of the Civile and Eccleſiaſticall Law in this realme, as they are now practiſed, or ought to be practiſed, which was a thing firſt propounded, but ſt put in execution in this worke.

Albeit that which hath beene already ſaid as ncerning the Civile and Eccleſiaſticall Law may ell imply the neceſſarie preſervation of them both thin this Land, yet becauſe it was a thing I pro-iſed to ſhew in the beginning of this Treatiſe, er that I had gone over the reſt of the parts of y diviſion, I will in a word or two make plaine e neceſſitie thereof.

And therefore for a ground of all the reſt, I will ſume this for a matter confeſſed, that every man owes, that every well ordered Common-wealth nds on two parts principally, the politick part, hich conſiſteth of the Prince and people, and the cleſiaſticall part which ſtandeth in *Sacris & cerdotibus*. And therefore well ſaid the Empe-our, Two of the greateſt things that God ever ve unto the world (meaning earthly things) as the Empire or ſecular government whereby e outward man is ordered and made, as *Ariſtotle* ith, *bonus civis*, that is, a good and loyall ſubject: nd the Prieſthood whereby the inward man is led, and is made, as the ſaid Author teſtifieth, *nus vir*, that is, a good and vertuous man, which e two wonderfull effects of the whole govern-ent in generall; neither can the one of theſe be anting, but the other will be ruinated and rought to deſolation.

In authent. quon. oport. Epiſcopos in prin. col. 1. Auth. de non alien. and. & c. rebus Eccl. c. 2. §. 1.

Secondly,

Scondly, no man is ignorant of this, but in politique government two things ſway the whole ſtate, the one is peace at home, and the other is warre abroad: which as they have, their ſeaſons, ſo they have their cauſes and effects, the one from counſell at home, the other from diſcipline abroad; neither can the one, or the other of theſe be maintained, but by their private and proper Lawes.

Beſide, in peace who ſeeth not, there is as much need of vent by ſea, for to beneſit the Commonwealth by, either by importation of thoſe things that wee want at home, or by exportation of thoſe things wee abound with; as there is proviſion to be made for the increaſing and preſerving of thoſe things that wee have riſing and growing by land in our owne countrie, neither of which can be had or injoyed without their proper Lawes fit and appertaining to either policie? And what Law is there that ordereth theſe buſineſſes but the Civile Law onely, which giveth a forme to Navigation and all occurrents that happen by ſea, whether they be in, or about the Navigation it ſelfe or the contracts, or as it were contracts that are made in, upon, or beyond the ſame.

As a Legall forme is requiſite in peace at home, and Marine affaires abroad, that every thing may have his due effect according to the right theorof, ſo alſo it is neceſſary in warlike exploits upon the Sea, that every action have his limits and bounds, whereby Juſtice may bee miniſtred: which if it be to be obſerved where lawfull warre is held betwene Prince and Prince, that every one be net left unto

nto his owne luſt, much more is it expedient to be
t in ure in Piracies and other Sea-robberies,
here the inhocent is ſpoyled, and the ſpoiler is
riched, The redreſſe whereof is not, but by the
dmirall Law, to whom the Princes of this Land
ve granted that authoritie.

For the often commerce of Princes with Princes,
the negotiation that one State hath with an
her, there is nothing more neceſſary, than fre-
ent Embaſſages, wereby intelligence may be had
hat danger one State intendeth to an other, &
ow the ſame may be prevented by Leagues or
herwiſe, and how the ſame may be made and
aintainde: I know not what Law ſerves better for
l theſe ends and purpoſes than the Civile Law.

In matters that appertaine to the ſoules health,
e Preacher teacheth out of the word of God,
herein the right ſervice of God ſtandeth, hee
iniſtreth the Sacraments unto the people, and
ſtructeth them in other fundamentall points of
eligion. but it is the Eccleſiaſticall Law that
ompelleth men to the due obſervance hereof, and
uniſheth the trangreſſors.

All men grant, that there is a proviſion to be
ade for the Miniſter, for that it is againſt reaſon
hat any man ſhould goe to warfare on his owne
harges: but it is the Law of the Church that ſets
ut this proviſion, and yieldeth remedie for the re-
overie thereof, if it be denied.

Nothing is more due nnto the dead, than that
heir laſt Wils ſhould be obſerved; for that it is
ch an ordinance as a man hath not in his power
againe,

againe, when. God hath once called him hence, neither is there any thing that Princes have more gratiously granted unto their ſubjects, than that in their life-time they may diſpoſe of that which after they are dead, is none of theirs; and yet ſhall take place when they are not, as though yet they were theirs: in which proviſion the Civile and the Eccleſiaſticall Law, are above all other Lawes moſt religious.

Chriſtening, Wedding, Burying, whereby a man entreth into this world, converſeth in the world, and returneth againe unto the earth, from whence he was taken, and ſo after paſſeth to glorie, and everlaſting bliſſe, are every one of the Eccleſiaſticall cogniſance.

How many men of great skill, ſuch as few Princes have greater in all kind of learning, are of this ranke, not only in the ſociety of them that profeſſe this knowledge here in the chiefeſt City of the Land, but alſo in both the Univerſities, and in ſundry other places of this Realme, not ſtrangers, or forrainers, but home-borne ſubjects, of the ſame faith, of the ſame religion, of the ſame kindred, and familie, of like alleagince to the Prince, and ſervice to the Commonwealth as other his good ſubjects are, even thoſe that oppugne this profeſſion chiefly; whoſe practice, if it be overthowne, or proviſion leſſened, not onely thoſe that are now preſent, & make profeſſion of this knowledge ſhall be faine to turne their copie, but thoſe that are futurely to come, will change, their profeſſion, when they ſee there is no reward or eſtimation belonging thereto? for it is honour that nouriſheth Arts, and no man

man will follow that profeſſion that is out of count. and credit; but every Father will ſay unto his Son in like ſort as *Ovids* Father ſaid to him, when hee ſaw him addict and give himſelfe wholy to Poetrie, *Studium quid inutile tentas?* It was anciently ſaid of the profeſſion of theſe Lawes, *Dat Juſtinianus honores*; but now it is ſo far off from that, that it conferres honours, as that it is almoſt a diſcredit, for any man to be a Civilian in this ſtate, and the profeſſion thereof doth ſcarce keepe beggerie from the gate.

As God doth diſpoſe his government by juſtice & mercie (whereof notwithſtanding mercie hath the ſupreme place in the Lords Tabernacle, as that which was put above upon the Arke, wherein were the two Tables of ſtone, in which the Law was written, to which St *James* alluding, ſaith, that mercie triumpheth over judgement) ſo the Princes of this Land to the imitation of that heavenly repreſentation, have appointed two ſupreme ſeats of Government within this Land, the one of Juſtice, wherein nothing but the ſtrict letter of the Law is obſerved, the other of Mercy, wherein the rigour of the Law it tempered with the ſweetneſſe of equity, which is nothing elſe but mercy qualifying the ſharpneſſe of Juſtice: to either which Courts they have ſorted men fit for their skill, and education to manage the ſame; that is, to the ſeat of Juſtice, the profeſſors of the Law of this Land, who may be thought beſt to know the Juſtice of the ſame: but to the other they have aſſigned the profeſſors of the Civill Law, for that a great ſort of titles of that Law, are Titles

Exod. 25.

James. 2.

of

of equity, as, whatſoever is *Jus prætorium*, or *Jus ædilicium*, with them is matter of equity; ſo that they may ſeem beſt able for their skill in theſe titles (of which no other Land hath the like) to aſſiſt the Lord Chancellour in matters of Conſcience. Who though he be a man, for the moſt part, choſen by the Prince himſelfe, out of the reſt of the Sages of this Land, for his ſpeciall good parts of learning and integrity above the reſt (as now the honourable perſon is that occupieth that place, who is, as *Tullie* ſaid of that eloquent Orator *Marcus Craſſus*, *Non unus ex multis, ſed unus inter omnes propè ſingularis*) ſo that they might be thought for their great and eminent wiſdome in all things appertaining to their place, able to direct themſelves; yet becauſe it is, *Divinitatis potius quam humanitatis, omnium rerum habere memoriam, & in nulla errare*, as one ſaith, It was providently done by Princes of former age, to joyne to theſe great perſonages, men furniſhed with knowledge in theſe caſes of conſcience; wherein if they ſhould at any time ſtick, they might be adviſed by them that are aſſeſſors with them, what they find in the Law proportionable to the caſe in hand, that thereto they might ſquare their decree, or order accordingly; whoſe variety in theſe caſes is ſuch, that hardly there can fall out any caſe in practice, but there will be ſome Law, in that learning, conformable unto it: which opportunity of men furniſhed with this knowledge for that ſeat, his Majeſty ſhall want, unleſſe the ſtudy of the Civill and Eccleſiaſticall Law be maintained, which alſo for the caſes of equity

uity and conſcience therein, is called of the old riters, *Æquitas Canonica.*

And what reaſon gave occaſion to theſe precent Princes to place men indowed with the skill f the Civill Law, in the Court of Chancery, the me alſo miniſtred unto them mindes to commit nto the ſelfe ſame men, the ordering of their ourts of Requeſts: for that therein, for the moſt rt are handled poore miſerable perſons cauſes, as iddows and Orphans, and other diſtreſſed peole, whoſe caſes wholly rely on piety and conſcince, as a fit ſubject for that Law to deale in, hich alſo will take a maime, if the ſtudy of the ivill Law be not upholden.

So then to deny a free courſe to the Civill and cclefiaſticall Law in this *L*and, in ſuch things as ppertaine to their profeſſion, or to abbridge the aintenance thereof, is to ſpoyle his Majeſty of a rt of his honour (whoſe glory it is to be furnied with all ſorts of profeſſions neceſſary for his tate, and beneficiall for his Subject) to weaken e State publique, and bereave it of grave and ſage en, to adviſe the State in matters of doubt and ntroverſy between forraine Nations and themlves, to diſarme the Church of her faithfull iends and followers, and ſo to cut the ſinewes (as uch as in them lieth) of Eccleſiaſticall diſcipline, d to expoſe her to the teeth of thoſe, who for eſe many years have ſought to devoure her up; d ſo now would doe it, if the mercifull provience of God, and the gracious eye of the Prince d not watch over her.

And

And ſo far of the neceſſity of theſe two profeſſions, and generally of the uſe and diſuſe of the Civill and Eccleſiaſticall Law in this Land, and wherein it is overlaid by the Common-Law, and how it may be relieved, if it ſeeme good unto his Majeſty, and the wiſdome of this Realme. All which I have written, not of any purpoſe to derogate from the credit of that Law, under which I was borne, and by which I hold that ſmall maintenance I have: (for I reverence it as a neceſſary Law for this State, and make ſuch reckoning of every of the profeſſors in his place, as becometh mee) but that it pittieth mee, and not only mee, but all thoſe that tender good learning, aud have no prejudicate minde toward the Common-Law, to ſee two ſuch Noble Sciences as the Civill and Eccleſiaſticall Law are, ſo to be diſgraced, as that there is no more reckoning made of them or their profeſſors, than if they were matters and men of no worth, and fit or apt for no ſervice in the Common-wealth: and yet notwithſtanding, the uſe of them is ſo neceſſarie as that the Common-wealth cannot want the ſervice of them in matter of great importance to the State, which (if the profeſſion ſhould come to a downefall, as it is like ſhortly to doe, if it be no more cheriſhed and made of than it is) will be ſooner ſeen by the want of them, than is now perceived by the having of them; and then perhaps, will the State lament for the loſſe of ſo goodly a profeſſion, when it will bee hardly recovered againe, as the children of *Iſrael* did

did for the Tribe of *Benjamin*, when they had in one day ſlaine well nigh the whole number of them.

READER before thou make uſe of this Index, be pleaſed to correct with thy pen ſome misfigured pages from 239. to 270. and ſith the Moon hath her ſpots and Venus her moles, thinke it not ſtrange if this little book have it's errata's, if thou finde any overlooked pointings, literal faults, or any capital eſcapes lay not the Mimick, for even thou thy ſelfe knoweſt that it's a difficult thing to content Momus.

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FINIS.

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Texas Archeological Research Laboratory
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Austin, Texas 78712